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ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

MEETING OF THE

UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona
March 29, 2006
9:00 a.m.

Location: 1110 W. Washington
Room 250
Phoenix, Arizona

REPORTED BY:	WORSLEY REPORTING, INC.
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1 COMMITTEE MEMBERS PRESENT:
2
3 GAIL CLEMENT, Chaiperson
4 HAL GILL, Vice-Chair
5 PHILIP McNEELY
6 KAREN GAYLORD, Esq.
7 TAMARA HUDDLESTON, Esq.
8 CYNTHIA CAMPBELL, Esq. (Telephonic appearance)
9 ANDREA MARTINCIC
10 THERESA FOSTER
11 JON FINDLEY
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1 P R O C E E D I N G S

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3 CHAIRPERSON CLEMENT: Good morning, everyone.

4 Welcome to the March 29th, 2006, UST, Underground Storage

5 Tank, Policy Commission Meeting.

6 Let's start with a roll call here.

7 MS. HUDDLESTON: Tamara Huddleston.

8 MR. MC NEELY: Philip McNeely.

9 MR. GILL: Hal Gill.

10 CHAIRPERSON CLEMENT: Gale Clement.

11 MS. MARTINCIC: Andrea Martincic.

12 MS. GAYLORD: Karen Gaylord.

13 MS. FOSTER: Theresa Foster.

14 MR. FINDLEY: Jon Findley.

15 CHAIRPERSON CLEMENT: And then we have Cynthia

16 Campbell by telephone.

17 MS. CAMPBELL: Present.

18 CHAIRPERSON CLEMENT: Okay, great. The first
19 agenda item is Approval of Minutes from the February 2006
20 meeting, and I have not had a chance to read that.

21 Is there any -- I would suggest -- I would ask
22 that we just delay the approval of those meeting minutes.
23 Did everybody, first of all, receive them? Other than
24 myself, did anyone have a chance to review them? No,
25 okay. So let's just hold off on that agenda item.

1 Does anybody have any -- I'd like to skip because
2 we have a limited amount of time that Cynthia's available
3 and I know the issue that she was most concerned about was
4 the Financial Subcommittee Update vote on Letter of Concern
5 regarding the Draft SAF Rules.

6 So what I would like to do -- I'm just trying to
7 think how to best facilitate Myron's participation. Any
8 suggestions? Should we hold off or should we just jump to
9 it? I think we should just jump to it. I said that we
10 would call him when we were starting, and we only have a
11 short period of time so let's just jump to if nobody has
12 any objections.

13 So we're going to move to Agenda Item No. 7 -- or
14 excuse me, No. 8, the Financial Subcommittee Update and the
15 Letter of Concern regarding the State Assurance Fund Rule,
16 to the next agenda item, and I'm going to turn it over to
17 Andrea.

18 MS. MARTINCIC: Well, the Financial Subcommittee
19 met in February as well and we reviewed the previous letter
20 which the Commission had sent to the Department in
21 September on the SAF Rule, and I know it was briefly
22 discussed last meeting; and so we decided to hold another
23 Financial Subcommittee meeting after the kind of final
24 version of the Rule came back from GRRRC, which occurred in
25 mid March.

1 So the Financial Subcommittee last Thursday
2 reviewed the final, official Rule package that's going to
3 be at the GRRRC hearing on April 4th and we looked through
4 the preamble and the Rule, reviewed the prior letter, and
5 took a little bit different approach than what was
6 discussed at the last meeting, which was to, you know,
7 include pretty much all the issues that we still felt were
8 involved with the Rule and instead felt that it might make
9 more sense to sort of prioritize and really choose the
10 three largest issues that owner/operators and stakeholders
11 felt were not addressed within the SAF Rule and attempt to
12 draft a letter of concern to GRRRC on those three issues.

13 So during the meeting the three issues that we
14 identified as being of primary concern were SAF
15 eligibility, denial of resubmittals, and then the co-pay
16 issue.

17 So those were the three main issues identified by
18 the Financial Subcommittee; and what we did is we went
19 through the preamble, which contains some new information
20 which the Financial Subcommittee had included with its
21 final Rule package to GRRRC for the hearing, and kind of
22 referenced back to the section of the Rule that we're still
23 concerned with and added new comments that were necessary
24 to sort of bring up some new issues to GRRRC on those three
25 issues.

1 So the first issue was the SAF eligibility. I
2 don't know if everybody -- I know this went out yesterday
3 afternoon, but I don't know if everybody wants to read
4 through it now while we're here first and then go through
5 it or not. I'm open to how everybody would like to move
6 forward.

7 Gail, do you want me to just kind of give an
8 overview? Has everybody read it?

9 CHAIRPERSON CLEMENT: Let's just go point by
10 point.

11 MS. MARTINCIC: SAF eligibility is the first issue
12 and it references back to the first section of the new
13 rule, which is 18-12-601(C) and, basically, the agency in
14 this section of the Rule is outlining a number of
15 conditions that must be met or else your application is
16 considered incorrect and, therefore, denied; and it kind of
17 changes the way you think about eligibility.

18 In the past it was based on "who" is eligible for
19 the State Assurance Fund Rule, whereas now with this list
20 of items it's more about "what" is eligible to be paid from
21 the State Assurance Fund rather than who is eligible to go
22 to the fund.

23 The other thing that it appears to do is it does
24 not allow the incorrect applications or incorrect direct
25 payment requests -- there's no longer that informal appeal

1 process for owner/operators or stakeholders to go to and
2 you're immediately sort of thrown into the formal appeal
3 process, which the Financial Subcommittee felt results in
4 higher cost to both the agency and to stakeholders.

5 And there was also some confusion within the
6 current rule and statute, there doesn't appear to be a
7 definitive time frame on when the agency would have to get
8 back to an applicant on whether their application is
9 incorrect or not, and that would again cause potential
10 delays and cost to operators and stakeholders and
11 additional money.

12 The second area of concern is denial of
13 resubmittals and that's listed under --

14 CHAIRPERSON CLEMENT: Before we go on, there's
15 some questions.

16 MR. MC NEELY: Can we discuss these items as we go
17 through, or do you want to wait until the whole letter and
18 then go back, because I'd like to talk about the first
19 bullet.

20 When you're first just reading your letter, when
21 you say it's a long list of requirements, they're really
22 not requirements. If you look in the Rule it says, "If you
23 meet any of these conditions, then you're not eligible."

24 You don't want to meet these conditions. These
25 are not new conditions. These are statutory requirements.

1 I'm just going to read them -- I'm going to read something
2 to you. This is 601(C) and it says, "An application of a
3 direct payment request is incorrect if any of the following
4 conditions are met. . ."

5 The first one is -- recites the statute. If your
6 coverage limits are exhausted, that's statute. What we're
7 doing is just putting all the statutory requirements --
8 because it's sort of a complex statute -- we're putting
9 them in one place. "These are the conditions that make you
10 ineligible." We've listed them out to make it easy so you
11 don't have to read the statute, go to the rules and
12 statute.

13 So the first one is just if you've exceeded your
14 limits, you're not qualified. You're not eligible. The
15 second one is -- and this is a rule -- if you resubmit,
16 you're not qualified. Then the third one, if you haven't
17 paid your tank fees -- that's 49-1020. That's currently
18 today. That's been that way for always, we just listed it
19 out. If you haven't paid your tank fees, you're not
20 eligible. If you're convicted of fraud, that's the fourth
21 one. That's in statute.

22 So if you go through this whole list, you'll see
23 it's statutory requirements, statutory requirements. What
24 we tried to do is just list all the statutory requirements
25 out in one list and say, "If these conditions -- if any of

1 these conditions are met, you're not eligible."

2 It's currently the same currently, but now you
3 just have to know the statute, know where to look in the
4 statute. So we're listing them out.

5 Then the informal appeal process, if you're
6 saying we're not giving the informal appeal process, we
7 would have to change the statute to give the informal
8 process because the informal appeal process is very clear.
9 It's for site protection review, CAP review, work plan
10 review. It lists out what is eligible. These are not in
11 our statute for informal appeal. These are formal appeal
12 items.

13 So we're not changing what we're doing today.
14 What we're doing is just listing it out to make it very
15 clear when you submit application, these are the
16 eligibility requirements and you have formal appeal
17 rights.

18 And even one step farther than that, we're not
19 actually making a determination it's denied. What we're
20 saying is, "You're not eligible," you know, "you can try
21 again." You don't even have to appeal it. You can just
22 fix it, you pay your tank fees, you come in, it's a re --
23 it's a new application; or if you want to argue that it is,
24 you are eligible, then you don't have to argue that. So
25 that's the first bullet.

1 CHAIRPERSON CLEMENT: Ms. Gaylord had a question,
2 I think.

3 MS. GAYLORD: Just a comment.

4 Looking at the expense for small owner/operators,
5 it's really expensive for small owner/operators to pay
6 consultants to procure applications for costs that are
7 clearly ineligible under the statute.

8 So setting aside the resubmittal, which appears to
9 me to be a whole other requirement, the rest are statutory
10 requirements, I appreciate having them all in one place;
11 and I think it is fair for us to do some due diligence
12 before our consultants prepare applications.

13 I have been on the wrong end of this issue. I
14 have filed for an owner of a tank a request for
15 reimbursement without checking with the operator to see if
16 he paid the taxes. It only took once for me to learn my
17 lesson and to have my consultants do their due diligence to
18 make sure that they met all the statutory requirements for
19 eligibility before preparing an application.

20 So I think at least as to the statutory
21 requirements I really like what they've done. I like the
22 fact that all the requirements are now clearly listed so
23 that we can go to one place and figure them out.

24 One of the criticisms I've had from the past is --
25 you know, I've practiced in all areas of environmental law

1 and some of these areas -- RCRA, TOSCA -- have a reputation
2 for being complex. Well, I got to tell you, they weren't
3 as complex as this program was in the past.

4 When you have to go find out when your work was
5 done and which cost schedule was applied and you can't
6 figure out what the requirements are because they're in
7 sixteen different places, that has been a problem for me
8 and my clients in the past.

9 So as to that, as to the list of statutory
10 eligibility requirements, I appreciate that. I think that
11 they are fixed in statute. They don't appear to me to be
12 changed. I have studied them, and they appear to be
13 eligibility requirements for person and eligibility
14 requirements for cost and they are what they are. So I
15 like having them compiled.

16 As to the appeal process, again, I think the
17 statute is what it is. If you apply for costs that are
18 clearly ineligible under the statute, you're going to have
19 to go through the process that's provided for under the
20 statute, and that seems to me to be fair.

21 I think -- in looking at the GRRRC comments -- I
22 think in commenting on the Rule we were all concerned with
23 trying to identify whether the Rule imposed additional
24 burdens on us, and so we made comments from that
25 perspective.

1 In looking at the GRRC process, what GRRC is
2 interested in is: Did DEQ meet the agency rules of
3 producing costs for the program, facilitating reimbursement
4 for eligible parties, reducing the burden on an
5 overburdened department that isn't fully staffed and making
6 the process clear and efficient?

7 And I think -- from that process I think their
8 handling of the SAF eligibility section, at least as to
9 discussion on the statutory requirements, meets those goals
10 from my perspective.

11 CHAIRPERSON CLEMENT: A question that I had, it
12 seems to me that by making a party ineligible you eliminate
13 some of their rights in terms of appeal because they don't
14 have a standing with the Department. Basically, they're
15 not anybody. Is that correct?

16 I mean, am I misinterpreting that?

17 Ms. Gaylord.

18 MS. GAYLORD: I think the statutes did that. I
19 think the statutes treat ineligible persons and ineligible
20 costs differently than they do eligible costs that are
21 protected by the Department for one of the other reasons.

22 CHAIRPERSON CLEMENT: Because that's the thing
23 that seems to kind of twist this a little bit is the fact
24 that it's not just dealing with applications and defining
25 eligibility, but I do think it's added a couple elements at

1 least -- and I think it's like No. 1, that whole concept of
2 reimbursement application. That's a new -- I think that's
3 a new -- oh, no, I'm sorry. I got that wrong, I'm sorry.
4 No. 2, yeah, the resubmittal.

5 MS. GAYLORD: And that's why I separated that out
6 from the comment.

7 CHAIRPERSON CLEMENT: Yeah, that's a new issue
8 there regarding resubmittals.

9 So, in your opinion, just to flesh this out --
10 because I agree with Karen it's an extremely complex area.
11 I have struggled with trying to understand factually what's
12 correct and what's not, and one of the issues that I had is
13 looking at this section and seeing very clearly that the
14 appeals process was limited to the formal appeals by the
15 Rule, is it your opinion that the formal appeal process
16 already is the only thing, other than the resubmittals,
17 which is a new issue, that they would be eligible for?

18 MS. GAYLORD: And that's just my opinion -- and
19 it's not worth that much, you know, taking it with a grain
20 of salt -- but I see the process that's set up that
21 provides for informal appeals and a whole series of events
22 to occur to apply to people and costs that are ineligible
23 for reimbursement.

24 CHAIRPERSON CLEMENT: Mr. Gill.

25 MR. GILL: I have no problem with the list here

1 because they are all statutory requirements, but my
2 understanding from the complaints I'm getting from
3 consultants is that it appears that the SAF is looking at
4 "incorrect application" as anything wrong on it and they're
5 turning them back if you don't have your lesson right, and
6 I know they've done that.

7 So maybe they're now, you know, picking up the
8 phone but that -- was the term "incorrect" changed in the
9 preamble? Is there something changed, because that was my
10 understanding is there was confusion apparently from this
11 list because they were being returned for anything.

12 MR. MC NEELY: Well, I mean, Hal, for one thing,
13 this Rule hasn't gone into effect yet. So if we're
14 returning something, we probably can't figure out what side
15 it is. We give the wrong lesson and we can't figure out
16 what it is. I assume they could send it back; but at the
17 same time, you know, we do call people all the time.

18 We're on the phone and we call and say, "What do
19 you mean?" or "Do you mean this LUST number?" and things
20 like that; but the problem is you might have to get another
21 certification from the owner/operator if you have the wrong
22 LUST number on it.

23 So we're not -- really, we're not adding anything
24 new to this, and the purpose of this is to make it easier.
25 We're not trying to send things back. We're trying to --

1 what we do is -- in the past we would review the whole
2 application even if it was ineligible and waste all of our
3 staff time, and then send the letter out after doing
4 technical review and all this other saying, "You're not
5 eligible." It's just not -- it doesn't make any sense.

6 So now up front we look at it, "Is this
7 application eligible first?" That's the first step in the
8 process. After that we go to technical review. So this
9 should be, actually, more quickly because you'll know that
10 you're ineligible right up front rather than waiting for
11 the whole 90-day process and then getting a letter saying,
12 "You're not eligible."

13 CHAIRPERSON CLEMENT: It seems like it would have
14 been a lot cleaner -- and I don't know all the
15 ramifications obviously -- but if your first step is
16 eligibility determination, rather than "Incorrect
17 Application," this section could have been titled
18 "Eligibility Determination."

19 You know, clean it up so that it isn't -- and I
20 know this is a late comment in the game -- but to me what
21 is the twist on this is really this section is about
22 incorrect applications. It's not -- and, yet, it is a
23 determination of eligibility at the same time.

24 So that's what makes it extremely confusing to me,
25 and I think people have a fear by going through this and

1 claiming you're ineligible, that they lose some of their
2 rights and that's underlying this sentence.

3 MR. MC NEELY: Gail, we did put in very clearly,
4 you know, "We're sending these back under our 18-12-611,
5 formal appeal rights." We're making it very clear they
6 have formal appeal rights here.

7 CHAIRPERSON CLEMENT: Help me with that, Phil. So
8 like if you say -- just to set the perimeters. If you get
9 an application in and for one of these reasons it's
10 incorrect and an ineligible party, when you say they have
11 formal appeal rights, at that juncture of making that
12 determination they have two choices: Basically, they can
13 withdraw the application, is that correct, or appeal it?

14 MR. MC NEELY: This is not even withdrawing. What
15 we're saying, this is not even an application. It's
16 incorrect. We're just giving it back to them to fix it.

17 CHAIRPERSON CLEMENT: Okay. So then it doesn't
18 exist so then what do they formally appeal?

19 MR. MC NEELY: Well, in our determination we'd
20 say, "You haven't paid your tank fees," or "You haven't
21 paid your SAF taxes." So we'd send it back and then you
22 could cure that. "I'll pay the taxes. I'll pay the tank
23 fees." Then you send it back in.

24 If you wanted to appeal it in a formal appeal
25 you'd say, "I did pay the taxes. You messed up. Your

1 database is wrong." That would be the appeal. We'd look.
2 If you had documentation and we looked at our database,
3 "You're correct," it's an application.

4 MS. MARTINCIC: How is that not considered a
5 resubmittal then, because you're resubmitting?

6 MR. MC NEELY: That's why it's written this way.
7 It's not a resubmittal because we never accepted it. It's
8 not an eligible application.

9 MS. HUDDLESTON: Resubmittal is when you've
10 reduced the cost or denied the cost.

11 MR. MC NEELY: Right.

12 MS. HUDDLESTON: They haven't reduced the cost
13 because it seems based upon the statute which is reflected
14 in this list that you're not eligible for it.

15 CHAIRPERSON CLEMENT: So they haven't even got to
16 the second step, which would be review the actual
17 application?

18 MS. HUDDLESTON: Yes.

19 CHAIRPERSON CLEMENT: Ms. Gaylord.

20 MS. GAYLORD: I agree with you that this is a
21 really dumb title for this section, but I did look at this
22 and it does apply to the thirteen listed conditions.

23 To use the word "incorrect" is very unfortunate
24 because there are lots of times DEQ is going to say things
25 are incorrect, but this section refers only -- and this

1 section that does not provide for informal appeal applies
2 only to the thirteen listed conditions, and the thirteen
3 listed conditions with the exception of resubmittals are
4 statutory requirements. It appears to me that they appear
5 to be fair representations of what the existing
6 requirements are. They don't appear to add anything new.

7 CHAIRPERSON CLEMENT: So just to walk through the
8 process again. Somebody comes in, they have an incorrect
9 application because they are an ineligible party. That
10 application doesn't even exist, though they can formally
11 appeal the determination, basically, that they are an
12 ineligible party -- again, the language is extremely
13 difficult to parse through here -- and then depending on
14 that formal appeal they could be eligible or not, and then
15 the application will be reviewed after that.

16 If that application after the review was found to
17 be inadequate in some way, then they couldn't resubmit.
18 They would go through a formal review on the application
19 itself; is that correct?

20 MR. MC NEELY: The word "resubmit," that's not
21 accurate. This is not an application. If it goes through
22 a formal appeal process, it would be for the eligibility
23 issue.

24 CHAIRPERSON CLEMENT: Right, they wouldn't
25 resubmit. They would send it in again. All these words

1 have definitions.

2 MR. MC NEELY: Yeah, you could send in a new
3 application and if it's correct and cured, if it was
4 fixed. If you send the same one in and you still don't pay
5 your tank fees, we'll give it back, "You haven't paid your
6 tank fees yet."

7 So these are all -- it's not a resubmittal. If
8 you cure this and you submit a new application -- even
9 though it's the same application but you've already met the
10 condition that was not met, then it's not a resubmittal.

11 CHAIRPERSON CLEMENT: So other than 2 -- and 2
12 becomes a problem because, basically, you're claiming then
13 a party's ineligible if their application contains a
14 resubmittal. That's a bit over the top, I think.

15 MS. CAMPBELL: Madam Chair --

16 CHAIRPERSON CLEMENT: Yes, Ms. Campbell.

17 MS. CAMPBELL: -- if I may. One of the
18 problems -- you know, when I worked for the Attorney
19 General's office one of the problems I handled on behalf of
20 the agency were eligibility issues.

21 So people who submit applications who either don't
22 pay their tank fees or they're not the owner/operator or
23 whatever their eligibility issue is, they ultimately --
24 they understand the appeal process just fine and they
25 pursue it.

1 Now you're getting into the resubmittal issue, and
2 there's a really good point to be made here about why DEQ
3 should not accept quote unquote "resubmittals."

4 Take, for example, someone who is ineligible
5 because they are not the owner/operator and they submit an
6 SAF application for certain costs and they are found to be
7 ineligible and their application is returned to them
8 because they are not the owner/operator.

9 They choose either not to pursue an appeal or they
10 go through the appeal process and they lose and they're
11 found to be ineligible. Then they incur more costs in
12 cleaning up the site and they submit another SAF
13 application. That's a resubmittal.

14 That's what the department is talking about with a
15 resubmittal; and their point is, among others, is that the
16 resubmittal is a problem because there's already been an
17 adjudication or a choosing not to adjudicate an issue that
18 was already in play and now they're going to submit --
19 continue to submit more applications based on something
20 that has already been decided. That's what the resubmittal
21 is referring to, if I can clarify.

22 CHAIRPERSON CLEMENT: Any other questions,
23 comments, discussion?

24 MS. MARTINCIC: I just want to reiterate that, you
25 know, the Financial Subcommittee was a group of

1 stakeholders representing owner/operators and I appreciate
2 everybody's comments.

3 I'm bringing forth their viewpoints and, you know,
4 obviously there's disagreement about what this rule is
5 implementing, and I felt it was my job as Financial
6 Chairperson to bring forward these recommendations. That's
7 why they're here.

8 So I would just reiterate that, again,
9 owner/operators feel these issues are a concern and feel
10 that the agency had been operating in one way. Whether it
11 was right or not, they've been doing it a different way for
12 many years and in the last hour of the program now are
13 changing the rules, and I think a number of stakeholders
14 feel that that's inherently unfair so. . .

15 CHAIRPERSON CLEMENT: And the last point here can
16 I ask a question? Is there not a time frame for DEQ to
17 determine if an application or a direct payment request is
18 incorrect?

19 MR. MC NEELY: The time frame is the same time
20 frame. You know, we have 45 days to make the first
21 technical review, then 90 days to get all the applications.

22 MS. MARTINCIC: Is that in statute?

23 MR. MC NEELY: Yeah, statute -- it doesn't talk
24 about any part. It just talks about reviewing an
25 application.

1 MS. MARTINCIC: It just talks about an
2 application?

3 MR. MC NEELY: Right. This is the first step in
4 our process. The eligibility is the first step so it would
5 be early on.

6 CHAIRPERSON CLEMENT: So application review is in
7 statute and it's a 45 -- do you remember the citation? I
8 couldn't find it.

9 MS. FOSTER: Madam Chair.

10 CHAIRPERSON CLEMENT: Yes, Ms. Foster.

11 MS. FOSTER: If this document is not even an
12 application, as you call it incorrect and you throw it back
13 to the owner/operator, then those dates don't apply because
14 it's not a true application.

15 CHAIRPERSON CLEMENT: Oh. See, this is --

16 MR. MC NEELY: But to make that determination we
17 are treating it as an application when it comes in the
18 door. We look at it and then we say, "It's not eligible.
19 It's incorrect." So when it comes in the door, you're
20 thinking it's an application. You do the first step of the
21 process and then you say, "It's not correct," you send it
22 back.

23 So you don't wait a hundred days to look at it to
24 determine if it's not an application. It's a first step.
25 So the time frame would be early on in our review process.

1 CHAIRPERSON CLEMENT: Ms. Foster.

2 MS. FOSTER: So does DEQ have a general way of
3 doing things that that will be reviewed within a week or
4 two and the owner/operator, whoever submits it, will be
5 notified as soon as possible so that they're not waiting a
6 hundred days?

7 MR. MC NEELY: Oh, absolutely, yes. It's the
8 first step. So if we're going to meet a 90-day time frame,
9 this is the first step. It would have to be done early on.

10 CHAIRPERSON CLEMENT: Okay. What time frame
11 applies to the review of this section? Is it 45 or 90
12 days, the review of an application?

13 MR. MC NEELY: Ninety. Ninety days is the total
14 time frame to enter a determination.

15 CHAIRPERSON CLEMENT: Okay. So say -- let's just
16 walk through this as an example again.

17 Somebody sends their application in. You do a
18 review, determine they're ineligible. That's going to be
19 within 90 days. Okay, that application really doesn't
20 exist. They correct their eligibility situation for
21 whatever way they do it. They come back in with the same
22 application.

23 Does that 90-day clock start again because the
24 application has never been logged?

25 MS. MARTINCIC: I thought, though, if the agency

1 finds it's incorrect, it's not an interim decision at that
2 point, it's a final decision --

3 MR. MC NEELY: Right.

4 MS. MARTINCIC: -- and that's why it goes to the
5 final appeal process?

6 MR. MC NEELY: Final determination.

7 MS. MARTINCIC: So it's not an interim --

8 MR. MC NEELY: No, we have 90 days to make our
9 interim decision for applications.

10 MS. MARTINCIC: And if you find it incorrect --

11 MR. MC NEELY: We get a letter out before our
12 final determination. You get one letter saying you're not
13 eligible.

14 MS. MARTINCIC: But that's a distinction within
15 the appeal process is my understanding?

16 MR. MC NEELY: Right.

17 MS. MARTINCIC: Either you have an interim
18 determination or a final determination?

19 MR. MC NEELY: Correct.

20 MS. HUDDLESTON: It's not an interim
21 determination. It's a final decision, determination,
22 whatever the right language is, but it's made within the
23 time period for the initial review because it's the first
24 thing they look at.

25 MR. MC NEELY: And in statute, you know, for

1 curing your tank fees I think you have 30 days to do that.
2 Joe's looking at the thing. I don't have it. I think it's
3 1020 you have 30 days to do that. There's certain things
4 in statute you have a time frame.

5 CHAIRPERSON CLEMENT: Okay, back to the same
6 question. So you've got 90 days to review the
7 application. You make a determination -- or a decision. I
8 got to be careful with my language. You make a decision
9 based on that review within 90 days that the owner/operator
10 is an ineligible party for one of these reasons.

11 Then that application can be -- that decision can
12 be formally appealed or not. If they decide not to
13 formally appeal and they correct the condition that causes
14 them to be ineligible and they resubmit the same
15 application, that's not really a resubmittal. It's a new
16 application because it was never part of the formal quote
17 "application review process."

18 Does that give you another 90 days then to start
19 the review process?

20 MR. MC NEELY: Right.

21 CHAIRPERSON CLEMENT: Okay. Okay, that's clear.

22 MR. MC NEELY: But, Gail, I think you're
23 insinuating that it's going to take so much time. You
24 know, we've had years and years of backlog in the past. We
25 are caught up. People used to wait three years for

1 payment.

2 It's much more streamlined now. Things are
3 happening very quickly. We have money to pay. So I think
4 you're insinuating that we --

5 CHAIRPERSON CLEMENT: Oh, I apologize. I wasn't
6 insinuating a time frame. I was insinuating the lack of
7 clarity in the process because this is a new thing, and we
8 had to work through it in our way up here and that's -- if
9 my tone is that, it wasn't about the 90 days. It's how
10 somebody is going to figure out where they are in this.

11 MR. MC NEELY: I would argue that it is much
12 sooner than you -- the current process, review the whole
13 application and they tell you that you're ineligible at the
14 90-day mark, you're going to be about 60 days ahead of time
15 if we do it up front. This is going to be much quicker and
16 much more streamlined.

17 MS. HUDDLESTON: And the theory of putting this to
18 the Rule is that you won't submit an application that is
19 ineligible because you will have looked at that before you
20 submit it.

21 CHAIRPERSON CLEMENT: I can see the advantage in
22 why you did this. It's just so confusing the way it's
23 written and how it's put in here.

24 Mr. Gill.

25 MR. GILL: Gail, I think, Karen, you hit the nail

1 on the head. The problem is where it was placed and how
2 it's worded because it sounds to me like this is what's
3 been going on all along. They tried to make the process
4 better by putting the list there, which is a good thing,
5 but it's completely misunderstood in the regulated
6 community and I don't know whether it's gonna be understood
7 in the DEQ as well. They say, "Yeah, because people are
8 receiving things back," and they're thinking it's because
9 of this.

10 CHAIRPERSON CLEMENT: Yeah, but they have to
11 remember it's not in place yet, too.

12 Do we want to -- Ms. Gaylord.

13 MS. GAYLORD: I'm sorry, just one comment I should
14 have made up front. I want to apologize to Andrea for not
15 attending the Financial Subcommittee meeting because I know
16 she's got an enormous task that she's undertaken, and I
17 know it's most helpful if we're all there providing our
18 input up front and I really did intend to be there. I have
19 been sick with this cold for the last couple weeks, and so
20 I apologize because I know this would have been helpful to
21 have this when you were trying to formulate this.

22 MS. MARTINCIC: No, that's fine. Theresa was able
23 to attend, and Hal and Gail were also in attendance at it,
24 but thank you. I know you were sick.

25 CHAIRPERSON CLEMENT: Should we move on to the

1 next --

2 MS. MARTINCIC: Is there any --

3 CHAIRPERSON CLEMENT: Well, we'll decide where we

4 take -- let's just talk through the issues and see what

5 we've got left.

6 MS. MARTINCIC: So the next issue that they

7 identified is the denial of resubmittals, which is somewhat

8 related to the SAF eligibility under 18-12-601 and it's

9 also listed under Scope and Review -- or Standard and

10 Review. I forget what the name of that heading is; but,

11 essentially, this is owner/operators feel this is a

12 change. It's sort of the process that's been happening

13 over the years. Owner/operators are able to wait, you

14 know, and when it made financial sense to appeal something,

15 appeal it at that time.

16 This is now not really allowing them to pool

17 together any of those denied costs to do that. So,

18 essentially, they either have to hire an attorney more

19 frequently or fight it more often, and I think the concern

20 is that small folks and mid-sized folks are going to be

21 hurt more economically by this because they're less likely

22 to want to go through all the appeal process to reclaim

23 denied costs.

24 ADEQ -- the new issue that we looked at that DEQ

25 added to their preamble was a discussion about withdrawal

1 of costs, and the concern among stakeholders on that issue
2 is that it's in the preamble and it's not in the Rule and
3 so at any time DEQ could change that practice.

4 It's not very well known among the regulated
5 community. It seems like it's something new that was added
6 to the preamble. So that's addressed in the letter.

7 CHAIRPERSON CLEMENT: I think that's a pretty
8 significant issue because when I was in one of the meetings
9 and we talked about withdrawal, there were a number of
10 people that practice in the SAF world and they had no
11 knowledge or understanding of how that works, and so this
12 is kind of a -- we've spoken to other attorneys and they
13 are concerned with this issue because supposedly -- again,
14 I don't think this has ever been adjudicated or appealed,
15 but there are limits statutorily on what can be appealed
16 and how regarding resubmittals and, apparently, some folks
17 that are advising the agency believe that resubmittals are
18 illegal or not statutorily allowed

19 So then you'd have to have some other form of
20 dealing with the common-sense approach about if you've got
21 a problem and not a big problem how do you address that
22 without, you know, having to go through a formal process.

23 Mr. McNeely.

24 MR. MC NEELY: I'll just tell you, the intention
25 with these resubmittals, we're trying to be more

1 efficient. We review about a thousand claims a year. If
2 you're allowed to constantly resubmittal after you go
3 through an appeal process, we are never done. You can
4 resubmit on twenty applications this item, this item, this
5 item. We have to go back and review all those over again,
6 and you never get done.

7 So the SAF statute really gives you much more
8 rights than all the other statutes that we have because it
9 gives you informal appeal rights where you can informally
10 sit here and talk about it. You can say, "Well, I don't
11 have the report here. Can I take these costs out?" "Yeah,
12 go ahead and pull that out." We do that informally all the
13 time.

14 In addition to that, if you don't agree with the
15 informal part, then we go to formal appeal rights. We have
16 plenty of rights here, more than any of the other programs
17 have; and then what the problem is, if you can resubmit,
18 why go through the formal -- why go through the appeals
19 because then you just sneak it into -- you can sneak it
20 into another application and we can catch it maybe or just
21 wait a year and we have to review everything.

22 So it's just not efficient when we're
23 understaffed. We're trying to be efficient. I think we're
24 being very clear what's eligible, what's not eligible. We
25 give you plenty of opportunity, you know, with the informal

1 interim determination letter so -- and legally we're
2 thinking, "Geeze, once you litigate you don't relitigate,
3 relitigate and relitigate the same issue."

4 That's where the resubmittal came from.

5 CHAIRPERSON CLEMENT: And that part I can
6 understand and I can see where you tried to draft that
7 language in R 18-12-608(E). What I don't understand
8 again -- and let's walk through a scenario

9 Somebody has an application. They have a cost
10 that you don't agree with in that application. You're
11 saying their choice is to withdraw that line item in the
12 application and send it in another time.

13 What people have been doing in terms of practice,
14 however, is they'll line -- they'll have three applications
15 and there will be three line items that you don't agree
16 with and they'll only sit down and talk with you when it
17 makes sense for them to do it, and what you're saying now
18 is every time an application comes in if there is a dispute
19 regarding a portion of that application, they must go
20 through the appeal process per application?

21 Is that -- am I interpreting this correctly?

22 MR. MC NEELY: If they want to appeal that, they
23 have to go through the appeal process. If they don't
24 appeal it and they let the application -- the appeal time
25 run out we're saying, "You've lost your opportunity."

1 Really, you've lost your appeal rights."

2 CHAIRPERSON CLEMENT: Ms. Foster.

3 MS. FOSTER: Let's give an example. If I have
4 five applications and I'm going to be submitting to DEQ SAF
5 in the next year and they're in the works, I've sent the
6 first two in and they have items such as a \$4,000 fee here
7 and a \$3,000 fee here. So I go through the informal
8 appeal. I sit down with SAF staff. They have a different
9 opinion than I do.

10 My next step is formal appeal. As an
11 owner/operator I'm not going to bring an attorney in that
12 could cost me -- let's say a ballpark figure of 20,000 to
13 go through formal appeals -- and I don't know what they
14 cost -- for a \$4,000 issue, but my five applications all
15 with the same issue I would much rather withdraw them, put
16 them together, resubmit so that a formal appeal is on a
17 multitude of years or on a multitude of applications.

18 So from that scenario it's more efficient and
19 effective for me to group them together rather than to have
20 five formal appeals.

21 MR. MC NEELY: Right, and I would agree with
22 that. What we're saying is withdrawal. We currently do
23 that. The way we look at it is, it's the owner/operator's
24 application. If they want to pull the whole application
25 before we make that final determination and say, you know,

1 "We're pulling this out," you can do that. It's not a
2 resubmittal if you pull it out.

3 Or if during the process you say, "I don't have
4 backup for this SVE system. I want to pull the SV costs
5 out and when I get backup or whatever I'll submit those
6 costs." We can say, "Okay, you can do that if you'd like.
7 It's your application." Once we make our final
8 determination you can't go and say, "Now I'm pulling this
9 out," or you can't just sit silently and not say anything
10 and then a year later go, "I want to appeal all these
11 issues." It's just not efficient that way. So you have to
12 work a little more diligent, but the process is here to
13 work for the owner/operator.

14 CHAIRPERSON CLEMENT: Ms. Foster.

15 MS. FOSTER: And it sounds good from your side of
16 the table from DEQ, but until I get that final letter from
17 you stating that you disagree with me still, I don't know
18 until that point that it's still going to be denied; and
19 I'm going through a similar scenario right now with lawyers
20 involved with SAF staff trying to make a determination, and
21 I don't know what the results are based on the informal
22 meeting and any additional information provided to the
23 agency.

24 I don't know what the decision is until I get that
25 final letter that's saying, "Your next step is a formal

1 appeal." So I can't really withdraw it because I don't
2 have a clear answer of what SAF is going to be doing.

3 CHAIRPERSON CLEMENT: I think the other thing that
4 I think is going to be a burden is there are other places
5 in the Rule that talks submitting the invoices with a task
6 that is complete to the extent practicable I think the
7 language is. Now, who's going to interpret "practicable"?

8 If I withdraw a cost from a task because I know
9 that I'm going to have a potential dispute with the agency
10 and I want to lump these together under the same issue,
11 who's going to make the determination that you haven't
12 invoiced or the party hasn't invoiced, you know, for a
13 complete task to the extent practicable?

14 Who's practicable there? I mean, from DEQ's
15 standpoint I want all your tasks and costs on one invoice.
16 From the owner and operators' point of view they're gonna
17 be like, "Well, I know this is going to be contested. I'm
18 going to pull this item off the table."

19 Those two practices, I think, can end up being a
20 conflict. How are you going to work that through?

21 MR. MC NEELY: You're getting into hypotheticals
22 here. The purpose of the extent practicable is that you
23 don't -- we have to make a determination on was this a
24 reasonable and necessary cost for this activity?

25 You can't hold 80 percent of the cost -- when we

1 make a determination, "Yeah, this is 20 percent. We think
2 it's a hundred percent of the cost. This is reasonable and
3 we'll pay this cost for this activity," and as the years go
4 by keep getting costs for that activity that we already
5 thought we paid in full.

6 That's why we say extent practicable. If you know
7 that you're doing installing and you only have half the
8 invoice say, "The other half is coming 'cause we haven't
9 got the invoices from this contractor or that contractor."

10 That's what we're talking about. It's not, "I
11 want to withdraw this cost because I don't have backup."
12 You didn't tell us something, but you know it's there.
13 It's just so we can make a decision -- you know, a
14 reasonable and necessary decision based on that whole
15 picture, not just ten percent, five percent of the
16 picture. We get piecemealed, and it's very difficult to
17 make that decision.

18 CHAIRPERSON CLEMENT: Any other thoughts about his
19 comments? I mean, I don't think this one goes away and
20 especially with the practice that's not a policy or in
21 writing anywhere. I think that really makes me
22 uncomfortable.

23 Mr. Gill.

24 MR. GILL: That last issue is a very difficult one
25 because the cost of the system install can be very high and

1 trying to sit on portions of it while -- for instance,
2 while you're waiting for the system to be turned on or
3 you're waiting for the final permitting or final
4 inspections you're sitting on a hundred thousand dollars.
5 Many, many clients can't do that -- actually, none of them
6 will do that.

7 So that's just a real issue trying to wait until a
8 task is done; and I understand it's a bookkeeping issue,
9 but I don't think it's fair to put all that burden on the
10 owner/operator.

11 CHAIRPERSON CLEMENT: Mr. McNeely.

12 MR. MC NEELY: You don't have to wait. We're just
13 saying simply tell us it's on its way, the invoice. I
14 wouldn't expect them to sit on a hundred thousand invoice.

15 Just say, "I'm waiting for this invoice. It's
16 coming," and you should know if you're a project manager
17 how much it's gonna be. "We have another 50,000 or
18 approximately this much more coming." So we're not saying
19 wait.

20 MR. GILL: That's true, I apologize. I remember
21 in one of our meetings we had discussed the option of the
22 owner/operator putting in some kind of documentation that,
23 "This is what we're sitting on," that's true.

24 CHAIRPERSON CLEMENT: Ms. Gaylord.

25 MS. GAYLORD: There is no doubt this is taking

1 away from the flexibility that we all had before. The only
2 point I would make in explaining this to GRRRC we are going
3 to have to struggle with the very fact no other program
4 anywhere provides as many bites at the apple as this one.

5 In no other program anywhere would we have the
6 right to all these various types of appeal, and in no other
7 program could we take out time for appeal. This is the
8 only one I know of where you can wait and appeal later.

9 In every other environmental law there is an
10 absolute time from the agency decision that you have to
11 appeal. Only death row inmates have more rights than we
12 do, and so I think in explaining this to GRRRC you're going
13 to have to be prepared to have them -- or have them make
14 the point "yes" they are reducing our flexibility, "yes"
15 they are taking away an option we had before, but it's an
16 option that's fairly extraordinary when you look at other
17 agencies' interaction with stakeholders.

18 So that's my only point.

19 MS. MARTINCIC: This is like the most complicated
20 compared to every other environmental program in the
21 state. So maybe that's why there's a need to have that
22 many appeals built into it, because the program itself is
23 so convoluted.

24 MS. HUDDLESTON: But at the same time the statute
25 provides -- and I'm glad someone brought it up before I

1 did, although I was getting ready to.

2 The statute provides that -- you're right and the
3 process is that if you disagree with the final
4 determination you go to an appeal and to simply say, "Well,
5 I'm going to wait until and resubmit this another time and
6 make DEQ go through the review and the same costs and the
7 same time to go to the review again to get to the same
8 appeal right," does seem to be more than an excessive
9 number of bites at the apple.

10 CHAIRPERSON CLEMENT: There's just always
11 something that can be resolved simply.

12 Mr. Gill.

13 MR. GILL: Just finally, I think the overriding
14 issue here -- it sounds like in discussion here that the
15 owner/operators do have the option of pulling out sections
16 that are -- that for whatever reason they did not have
17 backup at the time, but the problem that we finally came up
18 with in the Financial Subcommittee is basically the last
19 paragraph.

20 This is only in the withdrawal process, is only in
21 the preamble, and we have real concerns that that's not
22 Rule. The way the Rule is written you cannot resubmit
23 these; and so just by saying that you can, "This is the
24 process we used and this is what we've done," as Gail
25 mentioned, many people and probably most owner/operators

1 probably didn't even know that and we just have concerns
2 that it just being in the preamble to the Rule, that leaves
3 us wide open to changes in personnel and changes in the
4 process.

5 MS. HUDDLESTON: The Rule does talk about you can
6 correct the application, and if you don't have the
7 submittals at the time of the informal appeal, then
8 correcting it would be withdrawing it.

9 That would be something of a stretch. Maybe we
10 should have spelled out the withdrawal process.

11 CHAIRPERSON CLEMENT: I think it would have been
12 helpful to put it somewhere or put it in policy or put it
13 in the bulletin or somewhere so that people know that they
14 have that right

15 Ms. Gaylord.

16 MS. GAYLORD: I may have accidentally discovered
17 this, I don't know, but we do routinely withdraw
18 applications. I think that's an excellent idea. Can the
19 Department put on the bulletin the availability so that
20 everyone understands that they have the ability to do
21 this? That's a great idea.

22 MR. MC NEELY: I think that's -- absolutely we can
23 do that, and once we get this Rule in place we're going to
24 be doing education outreach. That will be part of it,
25 telling you how to actually implement it.

1 MR. GILL: I guess what I would ask the next step
2 is can you make it policy?

3 MR. MC NEELY: We have to talk about it. It goes
4 through the whole chain of command. I don't know if it's
5 necessary or not to make it policy. If it seems like it is
6 necessary --

7 MR. GILL: I think it would make the regulated
8 public a lot more comfortable.

9 MS. MARTINCIC: It seems like something that was
10 added at the last hour to the report.

11 MR. MC NEELY: The reason we added it is because
12 people were concerned about it. Like I said, we've always
13 allowed that, you know. We do have -- 608(D) says
14 "Supplements and Corrections." It says you can support --
15 you can actually correct or can support your cost, claim.

16 MS. MARTINCIC: Right.

17 MR. MC NEELY: It says that we don't take out
18 withdrawing. It says you can correct it.

19 MS. MARTINCIC: I would just say as a
20 representative of tank owners, you know, we've been talking
21 about this rule for, like, two and a half years and denial
22 of resubmittals has been my issue for two and a half years,
23 and that's the first time I saw a withdrawal practice in
24 the preamble was two weeks ago. That's why I think people
25 would feel more comfortable if it was more policy.

1 MR. MC NEELY: I think it's been a year and a
2 half. I've only been here for a year.

3 It feels like five years.

4 MS. MARTINCIC: We started in 2004, I thought, on
5 this?

6 MR. MC NEELY: Well, I started in August 2004.

7 MS. MARTINCIC: Two years, two years, sorry. It
8 felt like two and a half.

9 CHAIRPERSON CLEMENT: When you're having fun, time
10 goes so quickly.

11 Ms. Foster.

12 MS. FOSTER: I'm still not sure on the issue.

13 How will I know after the informal appeal meeting
14 and additional documentation submitted to DEQ and
15 additional comments that that information is acceptable or
16 not?

17 The only way I know now is when I get that final
18 determination that says you can go to formal appeal. I
19 have no way of knowing if -- of knowing DEQ's opinion before
20 I get that letter so I can't pull it.

21 MR. MC NEELY: And I would hope that you've had
22 some open discussion in this appeal process.

23 MS. MARTINCIC: Because the issue is the time
24 frames?

25 MR. MC NEELY: No, the issue is we have a final

1 determination at that point. Then you have to do a formal
2 appeal to actually withdraw those costs.

3 MS. MARTINCIC: But if you don't withdraw them in
4 time, within a time frame, then it's considered
5 resubmittals, right? I mean, isn't that the issue, too?

6 MR. MC NEELY: Well, the issue is Theresa could
7 still withdraw the cost, but then she'd have to do a formal
8 appeal and she wants to do it at the informal appeal
9 process.

10 MS. FOSTER: Or to know when I should pull.

11 MR. GILL: Because I think in the discussions, in
12 what Phil was alluding to and what he had heard had
13 happened, is that the decision was made in the meeting,
14 "Yeah, I'm pulling those costs," okay. Not that it's
15 necessarily gonna happen --

16 MS. FOSTER: No.

17 MR. GILL: -- you're waiting to see if --
18 actually, you're waiting to see, "Well, here's the further
19 information we're getting you. Now can you accept it?"

20 MS. FOSTER: (Nodding of the head.)

21 CHAIRPERSON CLEMENT: And when you go into the
22 informal appeal negotiation, if you add additional
23 materials for them to review, there's not another informal
24 appeal. It becomes the final determination?

25 MS. FOSTER: Correct.

1 CHAIRPERSON CLEMENT: Okay, got it. Yeah, that
2 would be tricky. Okay.

3 MS. MARTINCIC: Getting on to the final point?

4 CHAIRPERSON CLEMENT: Yeah.

5 MS. MARTINCIC: The final issue that was brought
6 up in the meeting as being a major concern for everyone was
7 the co-pay credit issue, which was dealt with in
8 18-12-609(D); and, basically, that's not allowing a co-pay
9 credit to be carried forward on future applications if it's
10 not used up in that initial -- or in the application under
11 review. So if we want to discuss that.

12 CHAIRPERSON CLEMENT: Go ahead, Mr. McNeely.

13 MR. MC NEELY: Yes. I think there's confusion on
14 how we do things now. This is by statute. We're not
15 changing the way we do business today or last year or the
16 year before. We're keeping it exactly the same, and I'll
17 explain what we do because I think there's confusion.

18 Every time an application's submitted there's a
19 ten percent co-payment. We add those co-payments up. As
20 every application comes in, we know the first time it might
21 be a thousand. The next time it's 2,000. It's a
22 cumulative thing, how much have you paid.

23 When you submit an application, you get credit
24 for the application costs. So that credit gets applied to
25 your co-payment. If there's always -- if there's more

1 co-payment than your credit, that credit gets applied to
2 your co-payment and it's done. The credit is completely
3 used for that application.

4 When you submit that application in, if you have
5 more credit than you owe co-payment, let's say you have
6 \$1,000 of credit and only \$500 of co-payment, that \$500 of
7 co-payment will be credited. That \$500 extra of credit
8 will not carry forward to your next application. It goes
9 away. It's for that application. That's statute. That's
10 the way we've always done it.

11 What happens, though, is -- why I think the
12 community thinks we carry credits forward, if you have
13 \$1,000 -- for that application if you have \$1,000 in
14 credit, okay, and your co-payment application is only \$500,
15 so you have \$500 extra, if you had a co-payment previously
16 due, we'll use that \$500 for the past co-payment that you
17 didn't get credit for, but we don't carry that forward for
18 the application.

19 It's per application. Credits per application,
20 co-payment follows. Every application we add up your
21 co-payment and see how much did you pay? Is there a
22 balance? If you have credit, we'll give you the credit.
23 If it's not, the credit goes away until the next
24 application. That's the way we do it. It's sort of
25 confusing. We've always done it that way. That's the way

1 the Rule makes it. We can contest it.

2 CHAIRPERSON CLEMENT: Can I go through an example
3 just to be clear?

4 Okay, say my first application is a thousand
5 dollars. My co-pay's a hundred and my application credit
6 is fifty. So I've got a carry-over then of a \$50
7 co-payment, then, that's necessary to put on the books?

8 MR. MC NEELY: Right.

9 CHAIRPERSON CLEMENT: My second application is
10 again a thousand. My co-pay's a hundred dollars. So for
11 my outstanding co-pay at the time of the second application
12 is 150?

13 MR. MC NEELY: Right.

14 CHAIRPERSON CLEMENT: Say then my application fee
15 is -- I have no idea -- is \$200 but there would be no \$50
16 credit?

17 MR. MC NEELY: Right.

18 CHAIRPERSON CLEMENT: So, basically, anything
19 you've accumulated to the point of that application can be
20 paid against the credit for your application fee, but it
21 just won't move forward?

22 MR. MC NEELY: Correct.

23 CHAIRPERSON CLEMENT: Is that clear to everybody?

24 MR. GILL: I don't understand it, but I don't
25 think I want to.

1 MR. MC NEELY: That's consistent with what we have
2 been doing and what the Rule says we're going to do. We
3 think that's absolutely consistent with the statute.

4 CHAIRPERSON CLEMENT: I've read the statutory
5 language and it seems it's pretty tight, frankly. I don't
6 know if the statute would allow you to move that credit
7 forward.

8 MR. MC NEELY: I don't think it does.

9 CHAIRPERSON CLEMENT: Ms. Foster.

10 MS. FOSTER: It will if there's a UST installation
11 involved. That's the only exception.

12 MR. MC NEELY: Well, that's different -- well,
13 there's two cases. If you paid your 5,000 or \$25,000
14 co-payment way back in '95 and you haven't used that, we'll
15 carry that forward for your tank installation.

16 MS. FOSTER: But you're bound to have used that
17 \$25,000 up by now.

18 CHAIRPERSON CLEMENT: That's clear to everybody?

19 Okay, where do we want to go with this?

20 MS. MARTINCIC: This was the letter that the
21 Subcommittee asked the Commission to look at. I guess
22 based on the discussion it doesn't sound like the
23 Commission has the votes for SAF eligibility or credit.

24 I don't know if we want to strike those from the
25 letter and just send something on the resubmittals. If we

1 don't want to do that at all, then let's just call a vote
2 on the letter. I just want to be on the record with voting
3 and still having concerns. So, I mean, it's up to the
4 Commission members what to do.

5 I'm willing to go either way, but I just want to
6 be on the record that there's still issues.

7 CHAIRPERSON CLEMENT: Should we start with a vote
8 on whether a letter should be sent or wait until the very
9 end if we still have outstanding issues -- or consensus
10 outstanding issues anyway?

11 Is there a preference how we want to work through
12 this? Should we just work through each issue then and see
13 if there's any support with the issue that remains after
14 our discussion?

15 SAF eligibility, we've got, basically, three
16 points that we've made under this. Other than the Item
17 No. 2 under the 601(C), at least it's been clarified to my
18 satisfaction that the rest of them are statutory and that
19 they've been compiled and put into one place.

20 What -- I'm just trying find a way -- any other
21 discussion on this first paragraph?

22 MR. GILL: Is there any way to -- based on your
23 and Gail's comment -- Gail's comment anyway to clarify the
24 issues that -- where this is and what it's -- you know,
25 what it's titled, because I think that's where all the

1 confusion is, even if it's on the bulletin or something
2 like that, just some way to address this where it's
3 understood with everybody involved, because that's where
4 the problem is. I don't think people understand what it's
5 truly dealing with.

6 MS. MARTINCIC: I think maybe there's still an
7 outstanding concern that the way it's in the Rule that it
8 does take away from appeal rights for certain individuals
9 in certain cases.

10 CHAIRPERSON CLEMENT: Okay. Ms. Gaylord.

11 MS. GAYLORD: I don't have a concern on this
12 section, the rights level of going to GRRRC. I think the
13 section itself is very clear. I think the title's dumb,
14 but I don't think that a dumb title rises to the level of
15 going to GRRRC because I think, actually, if you read the
16 statute, it's very clear. It's not for every application.

17 CHAIRPERSON CLEMENT: It's just so convoluted the
18 way it's structured it makes it very difficult to
19 understand.

20 MR. GILL: I think it got tied in with the
21 resubmittals, too, on the next page.

22 CHAIRPERSON CLEMENT: I would be open to accepting
23 any language for discussion. I'm just not going to be able
24 to sit here and probably redraft language that has any
25 intelligence behind it while I'm trying to run this

1 meeting.

2 So, you know, if you want to take that shot on,
3 Mr. Gill, while we're working through this and say it in a
4 different way, but all I've got to do is work with this
5 paragraph right now.

6 Ms. Gaylord.

7 MS. GAYLORD: Just to clarify my comment, I would
8 support taking this section out of any letter that goes
9 forward.

10 CHAIRPERSON CLEMENT: Okay. Do we have a motion
11 on the table regarding this first paragraph, either to
12 remove it, to redraft it or to approve it as written?

13 Ms. Gaylord.

14 MS. GAYLORD: I would move to remove this
15 paragraph from the proposed draft letter.

16 CHAIRPERSON CLEMENT: Okay. Is there a second?

17 MS. HUDDLESTON: I'll second.

18 CHAIRPERSON CLEMENT: Okay. We have a vote. All
19 in favor of removing this paragraph from the first section
20 of SAF eligibility say "aye."

21 (Chorus of ayes.)

22 CHAIRPERSON CLEMENT: All opposed?

23 MS. MARTINCIC: Nay.

24 CHAIRPERSON CLEMENT: One opposition, so the
25 motion passes. We'll remove this paragraph.

1 Second paragraph with regards to the appeal
2 process, I personally have been convinced that based on
3 statute the informal appeal process, other than Item 2, has
4 been shut down.

5 Any other discussion we want on the second item --
6 or second paragraph? Is there a motion either to
7 eliminate, approve or redraft the second paragraph as
8 written under SAF eligibility?

9 MS. HUDDLESTON: I have a question.

10 CHAIRPERSON CLEMENT: Yes.

11 MS. HUDDLESTON: The vote we just had, was that
12 just the one paragraph or was that the entire bullet
13 point?

14 CHAIRPERSON CLEMENT: I thought it was just the
15 one paragraph, not the entire bullet point.

16 Did I make that not clear?

17 MS. GAYLORD: I meant that whole section.

18 CHAIRPERSON CLEMENT: Oh, I'm sorry. I think
19 everyone voting may not have known that, I apologize

20 Do we want to revote, then, because if the motion
21 was not clear to everyone the vote does not count, in my
22 opinion. So let's go back. I'm sorry. I apologize to
23 everyone. I thought that was the motion.

24 So, Ms. Gaylord, what is the motion?

25 MS. GAYLORD: I move to remove from the proposed

1 draft letter the entire SAF eligibility section.

2 CHAIRPERSON CLEMENT: Okay. Is there a second?

3 MS. HUDDLESTON: I second then.

4 CHAIRPERSON CLEMENT: Okay. Just for clarity, the

5 motion is to remove the SAF eligibility section in its

6 entirety. Okay, any other discussion, questions?

7 Okay. All in favor of the motion say "aye."

8 (Chorus of ayes.)

9 CHAIRPERSON CLEMENT: All opposed?

10 MS. MARTINCIC: Nay.

11 CHAIRPERSON CLEMENT: So the ayes have it.

12 Okay. Denial of Resubmittals, that's the next

13 item on the letter. Are there any motions on the table to

14 approve, eliminate or rephrase this section of the letter?

15 MS. CAMPBELL: I'll move that the entire section

16 be removed from the letter.

17 CHAIRPERSON CLEMENT: Is there a second?

18 MS. HUDDLESTON: I'll second.

19 CHAIRPERSON CLEMENT: Okay. All in favor?

20 (Chorus of ayes.)

21 CHAIRPERSON CLEMENT: Let's have hands 'cause I've

22 got to count that one. We have five hands: Jon Findley,

23 Karen Gaylord, Philip McNeely, Tamara Huddleston and

24 Cynthia Campbell by phone. The ayes have it.

25 There are four nays.

1 Okay, that's been removed.

2 MS. MARTINCIC: There's no letter.

3 CHAIRPERSON CLEMENT: Down to Co-Pay Credit.

4 Let's just follow through the process.

5 Co-pay credit, is there a motion on the table to

6 remove, to approve or to change the language in this

7 bullet?

8 MS. HUDDLESTON: I'll move to remove the entire

9 section.

10 CHAIRPERSON CLEMENT: Okay. There is a motion to

11 remove the entire section. Is there a second?

12 MS. GAYLORD: Second.

13 CHAIRPERSON CLEMENT: There is a second on the

14 table. All in favor?

15 (Chorus of ayes.)

16 CHAIRPERSON CLEMENT: We have one person opposed,

17 the motion passes.

18 Well, that sure took care of everything we were

19 gonna do. I am -- and I don't know if I'm going to be able

20 to put this on this agenda because I don't think I can, but

21 in discussion on a future agenda item for the next meeting

22 I am going to suggest that the Policy Commission draft a

23 letter for the next meeting discussion that -- regarding

24 this denial of resubmittals is a letter that goes to the

25 Director requesting that the withdrawal practice become a

1 written formal policy. Probably that will be an agenda
2 item we can discuss.

3 Ms. Gaylord.

4 MS. GAYLORD: And I would suggest that's related
5 to the agenda topic and we're fully allowed to discuss it;
6 is that true?

7 MS. HUDDLESTON: Makes sense.

8 MS. GAYLORD: So I would certainly support that
9 approach. I think it makes sense to have the withdrawal
10 process widely known so everyone understands.

11 CHAIRPERSON CLEMENT: So my suggestion is that I
12 will draft the letter using very similar language. I just
13 can't draft while we're sitting here. It's too hard for me
14 to do.

15 In that letter, therefore, can we say -- can we
16 approve the letter or do you have to see the actual
17 language that goes out for approval as far as a Commission?

18 MS. HUDDLESTON: I think that that would be up to
19 the Commission.

20 CHAIRPERSON CLEMENT: Yeah, that's why I'm asking.

21 MS. MARTINCIC: It could be a sentence that the
22 Commission recommends to the Director that the withdrawal
23 practice mentioned in the preamble be mentioned in DEQ
24 policy. You could do it in a sentence.

25 CHAIRPERSON CLEMENT: Mr. Gill -- oh, I'm sorry,

1 Ms. Foster.

2 MS. FOSTER: I think we already have the language
3 in the second paragraph under the Denial of Resubmittals,
4 the appropriate language.

5 CHAIRPERSON CLEMENT: Well, it talks about the
6 problem, and I think we would add a sentence that says our
7 recommendation is you make this a formal policy.

8 MR. MC NEELY: Gail, if the Rules go through GRRRC,
9 we'll do training and we can talk about that in the
10 training.

11 CHAIRPERSON CLEMENT: I think just to -- because
12 we had so much input from the regulated community, I want
13 to make sure that we at least walk away with trying to
14 represent our positions as best we can, and I think this is
15 a middle ground that we can reach.

16 Mr. Findley.

17 MR. FINDLEY: Would it also be appropriate to
18 address the SAF eligibility just in our discussion of the
19 language and the difference between incorrect and not
20 eligible in this same --

21 CHAIRPERSON CLEMENT: That for me personally is a
22 more difficult task because it is so complicated to draft.
23 I don't think we can sit here and draft it and I'm not --
24 and the second point I would make is: What are we going to
25 recommend to the Director?

1 This one we can clearly recommend the withdrawal
2 practice should become a policy, should be written, should
3 become outreach to the regulated community.

4 The other I don't know how to put my arms around
5 it, frankly.

6 MR. GILL: Addressed in the training so it's made
7 very clear, the difference between the two.

8 CHAIRPERSON CLEMENT: That's a good suggestion and
9 that would jump on Mr. Findley's idea is we put a second,
10 closing paragraph suggesting, you know, detailed training
11 because these are complex --

12 MR. FINDLEY: Clarification in the language on the
13 eligibility.

14 MR. MC NEELY: We do need to do training between
15 now and when.

16 CHAIRPERSON CLEMENT: Do we have enough detail
17 that people feel comfortable putting a motion together and
18 approving that?

19 I know I won't be able to give you a second shot
20 at the apple. In other words, once I draft it I won't be
21 able to let you review it unless we go to another formal
22 review process. So are people okay with, you know,
23 empowering your Commission?

24 Okay. I need a motion, though. Does anybody --

25 MS. FOSTER: I'd like to put a motion on the table

1 that our Chairperson put together a letter to the Director
2 of DEQ in regards to the denial of resubmittals dealing
3 with the withdrawal practice, requesting or suggesting that
4 they make it a formal policy, and also including a
5 paragraph in there dealing with the SAF eligibility.

6 CHAIRPERSON CLEMENT: Just that it's confusing and
7 we strongly recommend that the regulated community is fully
8 educated and opportunity for training.

9 MS. FOSTER: Correct.

10 CHAIRPERSON CLEMENT: Is there a second?

11 MR. GILL: Second.

12 CHAIRPERSON CLEMENT: All in favor?

13 (Chorus of ayes.)

14 CHAIRPERSON CLEMENT: Anyone opposed?

15 That motion passes. So I will draft a letter, and
16 hopefully no one has any issues because it will be pretty
17 straightforward.

18 Okay. Any other updates from the Financial
19 Subcommittee meetings?

20 MS. MARTINCIC: I'm not going to hold a Financial
21 Subcommittee meeting on April 6th. I don't see a point.

22 CHAIRPERSON CLEMENT: So no April Financial
23 Subcommittee meeting. Thanks very much, Andrea. Thanks
24 for all your efforts. I know this has not been easy.

25 Okay. Let's jump back, unless anybody has an

1 objection, to the regular agenda items as they are listed.

2 MS. CAMPBELL: Madam Chair?

3 CHAIRPERSON CLEMENT: Yes, Ms. Campbell.

4 MS. CAMPBELL: Before you go on, I am just going

5 to go ahead and leave now before we get on to the next

6 agenda item. I don't want to interrupt in the middle of

7 it. So thank you all for letting me attend

8 telephonically. I appreciate the courtesy.

9 CHAIRPERSON CLEMENT: Thank you, Ms. Campbell, for

10 participating telephonically. Have a good session at

11 church.

12 MS. CAMPBELL: Thanks, goodbye.

13 CHAIRPERSON CLEMENT: Bye-bye. She's singing.

14 Okay, Discussion of Rules Affecting the UST

15 program. Mr. McNeely.

16 MR. MC NEELY: I'll jump right into 3 and 4

17 because I have the section item.

18 Rules -- civil rules, we pretty much finalized

19 those. We're getting ready to put those out for public

20 comment. So in the next few weeks -- hopefully in the next

21 few weeks we'll be submitting that to the Secretary of

22 State, but it does take a few weeks to publish it. So it

23 will probably be sometime in the May time frame that

24 actually goes out. So I'll let you know at the April

25 meeting if it's actually submitted or where it is in the

1 process, but we're getting very close.

2 The SCE general permit, there was a public meeting
3 a few days ago. I think some of you stakeholders went. I
4 did not attend that, and they are trying to finalize that
5 general permit and that should be happening in the next
6 month.

7 That's it for the Rules. Would you like me to go
8 through and talk about the Federal Energy Act?

9 CHAIRPERSON CLEMENT: If you recall, what we had
10 attempted to do at this meeting was try to put together a
11 more formal presentation for the Policy Commission and the
12 regulated community which would have included potentially
13 the EPA rep, and I don't know if we want to go into it with
14 or without the EPA rep or how do you want to go forward
15 here?

16 MR. MC NEELY: We can ask Andrea, but I don't have
17 all the information. I don't have the slide show but I do
18 have --

19 MS. MARTINCIC: I don't have his presentation.

20 MR. MC NEELY: In the past we just briefly talked
21 about it. We have a handout now with dates on it.

22 CHAIRPERSON CLEMENT: That would be great.

23 MR. MC NEELY: Ron, did we pass this out?

24 MR. KERN: Yeah, that was back there. All the
25 Members should have it, too. It should be in the back.

1 CHAIRPERSON CLEMENT: It looks like this,
2 everybody.

3 MR. MC NEELY: I think there's enough for the
4 audience, too, if they don't have it. It was passed on
5 August 8, 2005, as part of the -- it was the energy bill,
6 but there's a little portion of it -- it's Underground
7 Storage Tank Compliance Act is what they call it.

8 You can see ten items in here. A few of them will
9 take -- will significantly change the way we do business
10 and will make change, and I'll go through them all.

11 The first one is -- they call it "Delivery
12 Prohibition." The slang term is "red tag authority," which
13 acutally -- it's pretty bad, UST haulers getting no
14 deliveries of fuel if you're out of compliance, and the way
15 this is written -- in most of these cases EPA is to prepare
16 guidance of states and the state is supposed to implement
17 their guidance.

18 What the carot is if you don't implement the
19 guidance that the EPA comes up with, they're going to
20 apparently withhold our federal funds. The EPA has right
21 now no plans on writing their own regulations so they
22 really cannot come into this state or any other state and
23 enforece this. They expect the states to do all this,
24 enforce it, based on the two or \$300,000 they give us every
25 year for federal grants. So this is really just throwing

1 it at the states and saying, "States, deal with this."

2 The first one, the Delivery Prohibition, the EPA
3 is supposed to come up with guidelines by August 8th,
4 2006. We still -- there's a lot of questions like, "How
5 much out of compliance do you have to be?"

6 At one point or another you're always out of
7 compliance based on inventory or something at some point or
8 another, but we're assuming this would be significantly out
9 of compliance or repeat offender, but that's supposed to
10 come out in the guidance. So we have no authority to do
11 that. We would have to work with the Policy Commission and
12 the stakeholders and come up with some type of legislation
13 if we wanted to try and implement this, but that's a big
14 "if" and we'll see when we get to the EPA guidance what
15 they are expecting the states to do.

16 CHAIRPERSON CLEMENT: This is an enormously
17 difficult provision because you're basically requiring one
18 businessman to jeopardize the financial well-being and
19 business of another businessman by prohibiting deliveries.
20 I mean, this is an enormous issue.

21 MS. MARTINCIC: It's a huge issue.

22 CHAIRPERSON CLEMENT: Yeah, I would not want to be
23 in anybody's shoes implementing.

24 MR. MC NEELY: Well, California already has the
25 red tag authority. They've only used it a couple times and

1 it's for -- they're significant.

2 Some other states have it, and they're also
3 talking about writing guidance in rural areas. If you
4 actually need the gas, you know, if they're out of
5 compliance they'll have some type of waiver for 180 days.
6 They're still working all that out but, you know, the EPA's
7 not gonna -- they're gonna give us their guidance and have
8 us go and try to fight this out in every single state. So
9 we'll see how it goes.

10 The states -- I just came back from a conference
11 last week and a lot of states are basically saying, "I
12 don't know how you expect anybody to ever deal with this."
13 A lot of these legislatures don't meet but every two years
14 so there's a long road ahead of this on this one.

15 No. 2, "Public Records," they just want to have a
16 better idea of where releases are coming from. We have a
17 pretty good database, but we don't necessarily have the
18 data that the EPA wants. They want to know where the
19 release came from.

20 Well, a lot of times, you know, it came from a
21 line and you really don't know exactly what valve or what
22 fitting. You don't know that. So they're asking for a lot
23 of information. Our database can handle what we have, but
24 we may not have that information.

25 So the third one's another huge issue,

1 "Groundwater Protection." This is "Either A or B." So
2 what the law says is if you're within a thousand feet of an
3 existing drinking water system, and they don't define
4 "system." I would assume every gas station has a drinking
5 water system. They have water.

6 So they have to define does that mean drinking
7 water well? Does that mean piping? They have not come up
8 with that definition yet. So for all new upgrades and new
9 systems you have to have either secondary containment
10 throughout the piping tanks -- California already does this
11 -- or if you don't have that you have to have financial
12 responsibility for the installer, the tank manufacturer and
13 the owner/operator. So that's going to be very, very
14 difficult. They're coming out with -- by February 8, 2007,
15 they're coming out with guidance for that, too.

16 MS. FOSTER: Phil, would that mean that that water
17 meter coming to that place of business is part of that
18 water system? So from a thousand feet from that water you
19 have to be double-walled?

20 MR. MC NEELY: They have not said.

21 MS. FOSTER: It could be interpreted that way?

22 MR. MC NEELY: That's what everyone's worried
23 about. Basically, they were saying this applies to every
24 single gas station because everyone has water.

25 So that's what we need to work out. They're

1 struggling because they didn't write this legislation.
2 They're just trying to deal with it, too. They're working
3 with states, but they're having issues. I think that's why
4 it's taking some time to get this guidance out because
5 they're trying to figure out how to make it actually work,
6 and so the plan is they give us this guidance by February
7 2007 and if we don't implement it they hold our money.

8 "Compliance Report," this is mainly the Feds are
9 going to submit a compliance report to EPA and then the
10 state's supposed to follow it and just give a report of all
11 the government-owned tanks and their compliance records.
12 That should be something that our state can do pretty
13 well. We have a decent database.

14 "Inspections," all tanks that have not been
15 inspected since the upgrade requirement of '98 have to be
16 inspected. We've already done that in our program so
17 that's not an issue for us.

18 Then Item No. 6, inspections every three years,
19 this is a -- you can have a one-year waiver on that, too.
20 So you can have four years, basically, if you ask for it.
21 Right now we do inspections about every 3.7 years. We do
22 about 750 inspections a year. We have 2,600 facilities.
23 If you add it up, it's about every three and a half, four
24 years.

25 We're trying to hire another inspector so maybe

1 we'll get that. I think the three-year mark won't be too
2 difficult. We'll have to have one additional inspector and
3 one additional compliance officer, but I think that's very
4 doable; and as we're going down the road the compliance
5 should be more and more important for this program. I
6 think the inspections help the rural -- the small
7 mom-and-pop more than anybody. So I think this is a good
8 thing to do.

9 Now, "UST Operator Training," that's another
10 statutory change that's required. You have to on an annual
11 basis train operators and what they're thinking -- they're
12 developing guidance. The EPA deadline is August 8th, 2007,
13 to come up with guidance how we're going to do that.

14 What they're planning on doing is they're going to
15 have three different -- the way they're headed, it's not
16 confirmed yet -- but three different operators, one who is
17 actually responsible for the tanks, the owner/operator like
18 the first classification, the guy that's basically running
19 the tank system. The second one would be the person whose
20 day-to-day activities are running the system, and the third
21 operator would be like the clerk who has to press the
22 emergency shut-off valve if there's a problem.

23 So they have different levels of training.
24 They're talking maybe the owner/operator can designate an
25 operator and train that operator because a businessman may

1 not know how to run the system even though they're liable
2 for it. That will all be coming. They're talking about
3 trying to make it web-based if you have that. They make it
4 pretty straightforward.

5 Some states are talking about hearing inspection.
6 That would count as your operator training, but that's
7 something up in the air, too, until they get their guidance
8 documents out. We'll see where it goes.

9 So the next one, 8 is not a big issue for us,
10 "Alternatives to Inspection Program." That's due to
11 Congress by 2009, which is unfortunate because that's after
12 we already have to implement our program. We're going to
13 see what ways can you actually do it.

14 There's also an MTBE provision that you can
15 acutally use some federal money to clean up MTBE sites, but
16 we really don't have much of an issue with MTBE in this
17 state. That's mainly in the northeast. California has
18 major MTBE problems.

19 And then "Outreach," which really doesn't affect
20 us.

21 So the main ones that will have -- that really
22 will take a statutory change if the state decides to move
23 down that direction will be the No. 1 "Delivery
24 Prohibition," the red tag authority; No. 3, the
25 "Groundwater Protection," those double-walled tanks, or the

1 FR; and No. 7, "Operator Training," and the operator
2 training will cost money. We will have to -- it will
3 probably cost the owner/operator some money and we'll have
4 to administer it. You have to have staffing and it's an
5 annual basis, so more administration.

6 Three things. As you can see, it's all going for
7 prevention. It's not a bad thing, but at the same time I
8 think it may be very difficult for states to implement so
9 -- any questions on it?

10 CHAIRPERSON CLEMENT: It's very clear. Thank you
11 very much. It's very helpful. Did everybody -- if you
12 haven't gotten this, this is a nice outline.

13 We'll continue on with ADEQ Updates.

14 MR. MC NEELY: Okay. Well, the UST Program is
15 just the same. Sme ol', same ol'. We're trying to hire
16 people and we're having a difficult time. I think all the
17 consultants are having a difficult time. We've got a lot
18 of resumes. Last time I told you we put ads out in the
19 newspaper and the Internet. We've got a lot of resumes,
20 but when they see what we offer and call them up and
21 they're about 20,000, \$10,000 more than our maximum pay you
22 don't even get an interview. So it's a little
23 discouraging, but we're still plugging away.

24 UST Corrective Action Update, I guess, Joe, do you
25 want to jump in and do that?

1 MR. DROSENDAHL: My name is Joe Drosendahl. I'm
2 the Manager of the Corrective Action Section. I gave
3 everyone a copy of our meeting report. Basically, it gives
4 the total number of LUSTs that have been reported, opened
5 and closed.

6 For the last month, once again, we only had one
7 new release that's been reported, but we closed out 30. So
8 we're still closing more than we're opening, and right now
9 still we've closed 80 percent of all reported UST releases
10 to date.

11 Then it talks about the different corrective
12 action reports that are in-house that are either undergoing
13 or awaiting a review, and right now we only have 45 reports
14 that are awaiting review. Right now the highest is the
15 SCR, but that's down from last month.

16 Then I gave you an update on the municipal tank
17 closure report where so far 22 cities and counties have
18 made applications and we've removed 94 USTs from the
19 ground. I mean, we're trying to get the word out to owners
20 and operators that, basically, you know, the Municipal Tank
21 Closure Program's there. We're trying to do as much
22 outreach as we can.

23 Other activities that we're doing, we're still
24 continuing with the Route 66 initiative, and we're also
25 still implementing case management.

1 One of the first things that case managers will do
2 is probably send, you know, just a courtesy letter to the
3 owner/operators of their cases just to let them know that
4 they now have a case manager, and that's my report for this
5 month.

6 CHAIRPERSON CLEMENT: Mr. Gill.

7 MR. GILL: Weren't we going to have a presentation
8 on the Route 66 initiative?

9 CHAIRPERSON CLEMENT: (Nodding of the head.)

10 MR. GILL: Do we have that?

11 CHAIRPERSON CLEMENT: Mr. Drosendahl gave us some
12 detail reporting last time. I don't recall that being an
13 agenda item, though, frankly.

14 MR. DROSENDAHL: I don't either.

15 MR. MC NEELY: We could do that. We do have a
16 nice presentation with slides.

17 CHAIRPERSON CLEMENT: Are you suggesting that we
18 add that?

19 MR. GILL: I thought that I remembered that we had
20 asked for that.

21 CHAIRPERSON CLEMENT: I did not have that on my
22 bulletin.

23 MR. GILL: Well, I don't mean at this time, just
24 if there's any interest in it.

25 MS. MARTINCIC: I don't have to ask a question

1 about this.

2 CHAIRPERSON CLEMENT: So the suggestion would be

3 that we have a presentation on the Route 66 initiative?

4 Okay, there's no objections. Okay.

5 Andrea.

6 MS. MARTINCIC: Yes, I just wanted to confirm so

7 the agency's only given out one new LUST number?

8 MR. DROSENDAHL: Yes.

9 MS. MARTINCIC: So I guess the agency hasn't seen

10 this big influx of --

11 MR. DROSENDAHL: No. We keep waiting. We haven't

12 seen any big influx.

13 CHAIRPERSON CLEMENT: Now, one thing that I've

14 heard -- and I don't know if this is correct,

15 Mr. Drosendahl -- but when you say "new LUST," that is a

16 LUST that the agency has agreed is a confirmed release and

17 has a LUST number assigned to it?

18 MR. DROSENDAHL: Right.

19 CHAIRPERSON CLEMENT: It is not a report of a

20 release that the agency has not yet determined is a

21 release?

22 MR. DROSENDAHL: I think right.

23 CHAIRPERSON CLEMENT: Because those numbers can be

24 different.

25 MR. MC NEELY: Right.

1 MS. MARTINCIC: Are those numbers different? Do
2 you have, like, 30 waiting to be confirmed?

3 MR. DROSENDAHL: I'm not sure.

4 MS. MARTINCIC: As a Commission Member, I think
5 with the phase-out of eligibility I think that would be
6 something I'd like to see.

7 MR. DROSENDAHL: I can get those numbers for the
8 next meeting.

9 CHAIRPERSON CLEMENT: I think that would be really
10 helpful because as we were sitting through the Technical
11 Subcommittee meeting trying to figure out what's a release,
12 when is it a release, if we know that it's not an issue and
13 it's a different question if there's 50 out there waiting
14 to get to a LUST number, then that will be a different
15 issue.

16 MR. DROSENDAHL: Okay.

17 CHAIRPERSON CLEMENT: Good point.

18 MR. MC NEELY: And I can jump into the SAF Update
19 if you'd like.

20 CHAIRPERSON CLEMENT: Yes, please
21 Mr. Drosendahl, were you complete?

22 MR. DROSENDAHL: Yes, I was.

23 MR. GILL: There's no risk assessment or --

24 MR. DROSENDAHL: Yeah, there's no new information
25 on the Tier 2 -- like we talked about at the last meeting,

1 when we get, you know, fixes to the problem we were gonna
2 have Jeanene do a presentation on the Tier 2 software.

3 CHAIRPERSON CLEMENT: So there's no new news on
4 the tier -- you are still working out the bugs?

5 MR. DROSENDAHL: Right.

6 CHAIRPERSON CLEMENT: You are still working on the
7 document that supports the use of the Tier 2 software?

8 MR. DROSENDAHL: Right.

9 CHAIRPERSON CLEMENT: The question that we had
10 last time -- and, Mr. Gill, I don't know if you've had a
11 chance to look at it -- was the Excel spread sheet and the
12 acquisition.

13 MR. MC NEELY: And one thing, we have a new soil
14 rule and if the new soil rule goes into effect, the Tier 2
15 will be at that point obsolete. That could be right down
16 the road, another six months, and then we'll have to try to
17 update all the new toxicity numbers on the Tier 2
18 software. If we do that, which I assume we will, then
19 hopefully we can use that on the most current Excel spread
20 sheet. So that will be coming. That's the plan anyway,
21 but we'll see how the soil rule goes.

22 MR. GILL: I'm sorry, Phil, what did you say the
23 time frame on the soil rule is?

24 MR. MC NEELY: I'm pretty much finished. Now I
25 just got to get it over to the Secretary of State to

1 propose it. So the time frame there is usually a 45-day
2 public comment. It takes three weeks to get it, you know,
3 on the registry. We'll probably have 45 days of public
4 comment. Then we have up to 120 days if there's a lot of
5 comment.

6 Hopefully we can do it for them quickly, but it
7 depends how much outreach there is on it. So we're still
8 looking, best case scenario, the fall.

9 CHAIRPERSON CLEMENT: Six to nine months from now
10 is probably the best risk assessor; and I don't use this
11 Tier 2 software or try to, but this has been a moving
12 target for years now and I don't know how it can be a tool
13 to anybody if it's not final and there's no directions and
14 there's still problems accessing the spread sheets even.

15 So I just find it from this desk -- this position
16 frustrating and I just encourage the agency to get your
17 arms around it. If you've got a contractor, what is the --
18 I mean, contractors should be able to jump through the hoop
19 for the right amount of money, and if it's a question you
20 don't have the resources and you don't have the right
21 contractor or you don't have the right staff, whatever it
22 is, it just doesn't seem to be being resolved.

23 So that's my two cents.

24 Okay. Any other comments or questions on that?

25 Okay, the SAF Monthly Update I guess is yours now,

1 Phil.

2 MR. MC NEELY: Okay. If you look at your bar
3 graph, that's the SAF Update. This was a sad month for me
4 because we actually received 80 and we only processed 71.
5 So that's the first time since September that we actually
6 received more than we processed.

7 We are having personnel issues. We've lost a lot
8 of people so we are struggling to get these things out the
9 door, but still it's looking okay. We have total
10 applications of 143 in-house. Out of those, 130 are
11 in-house less than 90 days. The other 12 pending more
12 than 90 days, those may be based on waiting for information
13 for me to have decisions that we're waiting on.

14 So it's not bad yet. There is going to be a huge
15 influx of applications once we reach a settlement
16 agreement. We may have hundreds and we're going to have to
17 do some resource allocation to get those reviewed quickly
18 and out the door.

19 If you look at the appeals in February, we did
20 receive 57 informal appeals. By the end of February we
21 also settled 54 -- 57 informal appeals. So it's the same
22 number. We had six formal appeal requests received, and we
23 had zero determinations of formal appeals. So we seem to
24 be hanging in there with the appeals. There's not a
25 backlog of the appeals. Any questions on the SAF?

1 CHAIRPERSON CLEMENT: No. No other questions,
2 let's move on then.

3 Okay, the next agenda item is something that's
4 really important and critical right now is the UST Release
5 Determination. We had a very, I thought, well-managed and
6 helpful Technical Subcommittee meeting on this.

7 And it's the same issue we talked about at the
8 subcommittee, Mr. Gill. So I don't know if you want to run
9 this. Mr. Drosendahl wants to give a presentation to
10 start.

11 MR. GILL: Sure. I was going to say that's
12 basically what I was going to discuss in my subcommittee
13 update.

14 CHAIRPERSON CLEMENT: Does anybody need a break
15 right now? Yeah, let's do that right now.

16 (Whereupon a recess was taken.)

17 CHAIRPERSON CLEMENT: We're gonna get started
18 again, and this is really a critical issue during this time
19 period. It probably really didn't matter too much until
20 the phase-out of the eligibility date, which is July. So
21 this now becomes a critical issue for the next few months
22 in the program.

23 Okay, I'm going to ask Mr. Gill to run his portion
24 now.

25 MR. GILL: This basically enters into my Technical

1 Subcommittee update because this is what we addressed at
2 the last subcommittee.

3 I understand Mr. Drosendahl wants to give a
4 presentation before I go through the issues I had presented
5 to the Commission, so Joe.

6 MR. DROSENDAHL: Yeah. At the last Technical
7 Subcommittee I made basically the same presentation, and in
8 your packets there was some handouts that I distributed at
9 the last Technical Subcommittee.

10 Basically, the first thing is some selected
11 passages from the UST statute and from the Corrective
12 Action Rule regarding releases and suspected releases; and
13 then also attached to that is just portions of our current
14 guidance on the same subject, and then lastly there's the
15 copies of the old policies that are out there regarding the
16 same issue.

17 The issue in regards to releases, and especially
18 with the eligibility of new releases not being eligible for
19 the SAF, basically comes down to the definition of
20 "release" and "suspected release." They are two distinct
21 entities and it's the responsibility of owners and
22 operators to report suspected releases and also confirmed
23 releases to the Department, and both those notifications
24 need to be followed up by a 14-day report; but it is the
25 responsibility of the owner/operators to confirm the

1 release.

2 When confirmed release information is submitted to
3 the Department, we take a look at it and we just verify
4 that it meets the statutory definition of a release. If we
5 agree with that, we give it a LUST number to
6 administratively track that release. Occasionally, we have
7 disagreements over the report of a confirmed release. We
8 feel that it meets the definition of a suspected release,
9 and we usually have the owner/operator go back out and
10 collect more information. So that's really the process
11 right now.

12 Another thing that I submitted to the Technical
13 Subcommittee and also to you is this flowchart -- draft
14 flowchart regarding different scenarios and how the SAF
15 eligibility cut-off date of July 1st would affect each
16 different scenario. They go from the really, you know,
17 no-brainers to the ones that are, you know, more, you know,
18 important.

19 Basically, the eligibility states that a release
20 has to be confirmed and also reported to the Department by
21 -- before July 1st. So as you can see in the first three
22 scenarios, basically, the confirmed release is reported to
23 the Department; and even if DEQ doesn't verify and assign a
24 LUST number until after July 1st, as long as it was
25 confirmed and reported to the agency before July 1st it

1 would be eligible for the SAF.

2 Under Scenario 4, the confirmed release isn't
3 reported until after July 1st so that wouldn't be eligible
4 and, likewise, with the rest of the scenarios. Some of
5 these scenarios are no-brainers, but I just wanted to be
6 complete with all the different scenarios.

7 So, basically, that's what I kind of presented at
8 the Technical Subcommittee and we had discussions after
9 that.

10 MR. GILL: Thanks, Joe, and we did appreciate the
11 Department providing these again because some of these --
12 well, as you can see, the policy is in 1995. So many of us
13 have probably lost them.

14 I think the main issue -- and, also, you should
15 have in your packet the release -- UST release confirmation
16 process, for lack of a better term, and I presented the
17 issues that were discussed at the subcommittee.

18 Basically, these were just summarizing what Joe
19 had been keeping track of on the laptop while we were
20 having our discussion; and I think you can see in No. 1
21 that really is the core issue, is that everything is based
22 on the release being confirmed before July 1.

23 But the problem is, I think, the misconnect or the
24 misunderstanding, is even though the owner/operator is the
25 one that confirms the release, the important part of this

1 whole scenario is that it has to be verified by DEQ and
2 assigned a LUST number.

3 So the confirmed release by the owner/operator is
4 really meaningless unless it's confirmed and that's what is
5 -- I think that's what's been a confusion is that the
6 owner/operator says, "Okay, well, I'm confirming this
7 release so, therefore, I'm in the program," and that is not
8 the case and that's what really needs to be understood.

9 CHAIRPERSON CLEMENT: Ms. Martincic.

10 MS. MARTINCIC: Hal, I have a question. Is there
11 anything in the statute currently or the Rule that outlines
12 a timeline that the agency has to get back to an
13 owner/operator that their suspected release is a confirmed
14 release?

15 MR. GILL: My understanding is there isn't, and
16 that's one of the discussion items. There isn't a time
17 line and as brought up in --

18 MS. MARTINCIC: So I should have waited and read
19 ahead.

20 MR. GILL: Well, they're all related and that is
21 the issue, and it's especially the issue now that we're
22 coming up on the July 1 deadline is that if it isn't
23 responded to right away and the owner/operator is assuming
24 that they have a confirmed release and they're not notified
25 prior to July 1 and, therefore, can get information in to

1 show why they truly believe this should be a confirmed
2 release and miss that deadline then -- because my
3 understanding is if you send it in and DEQ sends it back
4 and says, "No, this is a suspected release," even if they
5 do it before the July 1 deadline and you turn it in after
6 the July deadline, you're out of luck. It has to be
7 confirmed before that deadline.

8 CHAIRPERSON CLEMENT: Let me just interrupt for
9 just a second. There is a time frame that DEQ has to
10 verify a release, is that correct, 120 days or --

11 MR. DROSENDAHL: Yeah, that's -- Joe Drosendahl.
12 That's in the informal appeal that if the Department hasn't
13 made a determination on various decisions, then people can
14 appeal within 120 days that we haven't made a
15 determination.

16 MR. GILL: But there's no deadline for that
17 determination?

18 MR. DROSENDAHL: No, but usually it doesn't take
19 that long. Sometimes, you know, unfortunately, it has but,
20 you know, we know the deadline's coming up so we're
21 committed to making those decisions just as soon as
22 possible.

23 Plus, the number of confirmed releases that are
24 submitted that we agree -- or we decide that they meet the
25 definition of suspected release, those don't happen that

1 often.

2 MR. MC NEELY: And what we've done over the last
3 couple months is we had a backlog of suspected releases
4 that we've been asking for information and we've been
5 really -- another backlog deduction but we've been sending
6 out -- Al Johnson is the manager of that, too -- sending
7 letters out saying, you know, "You only have until July 1st
8 to confirm this."

9 So we've been really sending one letter out -- I
10 think we've sent two letters out to people who didn't
11 respond. So we are on top of it, and as June comes around
12 we'll be very diligent to make sure those things get
13 processed very quickly.

14 CHAIRPERSON CLEMENT: Because one of the things
15 that we talked about in this spreadsheet is there's, like,
16 this gray area that the owner/operator who believes they
17 have this release and that they have the backup data
18 necessary and they submitted all of that prior to July
19 1st. Then it gets into the DEQ hopper with no time frame
20 necessary to respond. DEQ reviews it and says, "Oops, I'm
21 not sure this really is a release. It's still a suspected
22 release. Go out and give me this new information X."

23 The question was for me if the new information was
24 required but they had -- after July 1st but they had
25 reported what they confirmed as a release before July 1st

1 are they gonna be SAF eligible?

2 MR. MC NEELY: And we'll try to be very flexible
3 with that if the owner/operator provides enough
4 information. It will be a case-by-case basis.

5 CHAIRPERSON CLEMENT: But your goal will be if
6 they reported a release -- just to be clear -- yet you
7 believe you do not have all of the information necessary to
8 verify a reported release until after July 1st, you're
9 still gonna try to work with them to make the release date
10 prior to July 1st?

11 MR. MC NEELY: It depends what you mean by
12 "release." There's a suspected release --

13 CHAIRPERSON CLEMENT: Well, I mean the reported
14 release date.

15 MR. MC NEELY: Yeah. If you look at the statute,
16 it has to be a free product or a sample taken showing it's
17 from the system. If they actually drill and they get the
18 sample taken showing it's from the system before July 1st
19 and that actually turns out to be a release, I think
20 they'll be okay.

21 If it's a suspected release or, you know, it's
22 inventory, there's just no way. They're out of luck.
23 There's no way we can interpret that. We're going to try
24 to be flexible and try to handle these things immediately
25 as soon as we get them as June comes by so we can get the

1 information to confirm that before July 1st.

2 CHAIRPERSON CLEMENT: Ms. Foster.

3 MS. FOSTER: I think we need some clarification
4 for the record because come June 25th or near the end of
5 June there's going to be some problem issues.

6 In all the scenarios that Joe put together -- and
7 this is a lovely table -- every single scenario has a
8 laboratory result in it. If I'm pulling a tank out of the
9 ground on June 25th and I see a pipe that's discolored and
10 I see a pool of fuel below it, to me that confirms there is
11 a release and I do not need laboratory results and I can
12 call it in to DEQ and I can say, "I'm calling on a
13 confirmed release," and DEQ will accept that and they'll
14 say it's confirmed?

15 MR. MC NEELY: Well, if you look at the definition
16 that Joe passed out, "release confirmation" means free
17 product discovery -- that's the first one. You're saying
18 free product -- or laboratory analysis of samples collected
19 in accordance with the rules indicating a UST system.

20 So free product is the first one. If you see free
21 product, you're gonna get yourself a release, unless it was
22 pre-existing free product; but if you have a new release,
23 it's free product with a new release.

24 CHAIRPERSON CLEMENT: But that's what gets
25 confusing to me because there are going to be cases where

1 it's going to be unclear, and it's going to be unclear
2 after July 1st and people are going to have to do
3 additional things to clarify a reported release that was
4 reported before July 1st.

5 How are you gonna interpret that eligibility date
6 then?

7 MR. MC NEELY: It's going to be site specific. If
8 they have lab data that ties to a system and we're not sure
9 what system possibly, I can see that working.

10 If they just have -- you know, "I have a well
11 3,000 feet over there," that's not going to be site
12 specific. So it's got to be site specific. If they follow
13 the rules they should be okay, and we'll try to be
14 flexible.

15 What we don't want is to have 2,600 facilities
16 call up on June 30th saying, "I have a release." You need
17 to give me more than that. You need to try to follow the
18 rules with a drill or see free product.

19 MR. GILL: It appears to me there's one big group
20 that we see all the time that's missing here. I mean, free
21 product is fine, laboratory results; but pull out the tank,
22 there's a big hole in the tank, there's a big stained area
23 or you've got a big hole in your pipe and it's stained.

24 Why isn't that a release? Why isn't it
25 automatically a confirmed release?

1 MR. DROSENDAHL: I mean, staining, I mean, could
2 be -- it could be just water. I mean, basic --

3 MR. GILL: Plus odor.

4 MR. DROSENDAHL: Plus -- yeah, I mean -- but,
5 basically, in backfill there's always odor. There's always
6 discoloration. Plus, just a hole doesn't indicate there
7 was a release. I mean, basically, there's a hole on the
8 top of the tank, yeah, it might mean that when they
9 overfilled it, but just a hole doesn't indicate a release.
10 Just discoloration doesn't indicate a release or just odor
11 doesn't. I mean, it's very clear.

12 Plus, we've got to remember that after July 1st if
13 we go with odors and staining, then UST owners after July
14 1st basically will have full-blown releases just based on
15 odors and staining, which I'm not sure we want to do
16 either. So we have to be careful what we do now. We also
17 kind of have to live with after July 1st.

18 Plus, the rules were created where it's either
19 free product or analytical results to basically really pin
20 down that, "Yeah, there actually was a real release," that
21 there's some, you know, proof -- defensible proof.

22 So before in the early ages of the Department,
23 yeah, odors and staining were good enough and that's why
24 maybe we had so many releases that some of them just didn't
25 go anywhere, but they actually were releases or on the

1 books and had to be investigated.

2 CHAIRPERSON CLEMENT: Ms. Gaylord.

3 MS. GAYLORD: Just to follow Mr. Gill's comment
4 and to be clear, my understanding is you need free product
5 and some evidence that it came from that tank? You need
6 free product, plus the hole at the bottom of the tank.

7 If you just have free product and it's possible
8 where it came and it's possible it came from, as you
9 referred to, a pre-existing release, that's not good
10 enough?

11 MR. MC NEELY: If you have a free product at a
12 facility the last decade you can't just say, "Hey, I have
13 free product there so I have a release," no.

14 It has to be tied to something, you know, some
15 type of loss or tank pool or something and you have to see
16 free product there.

17 MS. GAYLORD: Okay.

18 MR. MC NEELY: It has to be a native soil when
19 we're talking about staining.

20 MR. GILL: I need clarity on that one again, what
21 Karen was asking, 'cause there's lots of releases that are
22 below this lay valve. In other words, the submersible pump
23 itself can release fluid. There's no holes in the tank,
24 but you can have free product down in the tank pit but you
25 don't -- you can't say, "Oh, it came from the submersible

1 pump but you can't see because there's no hole."

2 Free product is free product. I don't know where

3 else it can come from.

4 MR. MC NEELY: You can say it came from the tank.

5 MR. GILL: It doesn't have to be a hole?

6 MR. MC NEELY: Both.

7 MS. FOSTER: But it could come from the dispenser

8 and it wouldn't be covered.

9 MR. GILL: But you don't know that, that's what

10 I'm saying. Free product is --

11 MR. MC NEELY: But you would know that eventually

12 because if you had free product spilling out of your

13 dispenser, I mean, you would know that.

14 MR. GILL: Well, I guess I -- years ago I had a

15 big tank hole that -- there was no obvious leak, but there

16 was a bunch of free product at the bottom of the tank pit.

17 CHAIRPERSON CLEMENT: The question that I had was

18 if for the uncertain situations where the Department can't

19 verify before July 1st and ask for additional information

20 and we really probe this in the Technical Subcommittee,

21 Mr. Drosendahl said if the information was available before

22 July 1st but the Department did not receive it until after

23 July 1st, they would consider that to be a pre-July 1st

24 release.

25 If the data were not available until after July

1 1st for a question that they had regarding a release that
2 had been reported before July 1st, then those releases may
3 be after July 1st; is that correct?

4 Mr. Drosendahl.

5 MR. DROSENDAHL: I mean, like Phil said, I mean,
6 we're gonna try to be as flexible as we can but the real
7 problem comes -- like I said, it comes from the definition
8 of "release" and "suspected release."

9 The definition of "suspected release" is evidence
10 of a regulated substance at a UST facility. So, basically,
11 to be a release it has to be a regulated substance that is
12 connected or linked to a UST component. So, you know, it's
13 like I said, you know, the majority of releases that are
14 reported to the agency, you know, we look, "Yeah, it's
15 right below the tank," you know, they found contamination,
16 we give it a release; but if a sample is taken forty feet
17 from any UST component, they find contamination, well,
18 that's just a regulated substance at a facility.

19 So, basically, you know, owners and operators
20 definitely need to link the contamination with a UST
21 component and collect that sample as close as possible
22 where contamination is likely to be found as spelled out in
23 state statute and also the federal regulations on how you
24 determine a release, where it's most likely to be found.

25 MR. MC NEELY: And, you know, it's not in the

1 Department's best interest or the owner/operator's best
2 interest not to give a release if there's a release. We're
3 not trying not to give releases out. If there needs to be
4 cleanup, we want that owner/operator eligible for SAF to
5 get it cleaned up.

6 We have the same interest. We're going to try to
7 be flexible. It's hard to do all these type of
8 hypotheticals but they have to -- the owner/operator will
9 have to submit what they think is a confirmed release
10 before June 30th to be eligible. They can't wait until
11 after that because at that point it's like, "Too late."

12 They have to submit a sample or a free product
13 that ties to their system before that. How good that
14 information is, then we can try to be flexible after that.

15 CHAIRPERSON CLEMENT: Then that's where the gray
16 area will be is how good is that information and how much
17 do you agree with it?

18 MR. MC NEELY: Right.

19 CHAIRPERSON CLEMENT: Hopefully, there aren't a
20 lot of those out there so. . .

21 MR. MC NEELY: I hope not.

22 Mr. Gill.

23 MR. GILL: I'm just looking at the issues here and
24 see which ones we haven't addressed. I think we've
25 discussed 1 and 2, and I wanted to come back to 3; but

1 No. 4, the Department failing to respond to a reportedly
2 confirmed release cannot formally appeal. That was
3 actually touched on as well and, actually, as a result of
4 it there are potentially a dozen confirmed releases that
5 were not reported to DEQ that were not assigned LUST
6 numbers.

7 I can attest to this having turned in confirmed
8 releases in the past, you know, six along the pipe, the
9 piping system and getting one LUST number.

10 Well, there's a bunch of releases out there that
11 were never investigated to see if they went any further
12 because they were not given a LUST number, and that
13 actually ties in to No. 5 is that the owner/operators need
14 to look at the things that they've turned in in the past
15 and report them again.

16 If they feel they had a release -- confirmed
17 release which they turned in as a confirmed release and
18 were not given LUST numbers or they were not verified --
19 and the thing is there was never -- what I remember seeing
20 and there was no response -- is that you get a LUST number
21 here, a LUST number there.

22 There was never any explanation as to why these
23 were not, you know, confirmed releases and they very well
24 could be confirmed releases that were never investigated.
25 I know of several myself because we ended up having to

1 clean them up anyway.

2 So what the suggestion was was that be
3 communicated to the owner/operators that if they have any
4 confirmed, quote unquote, "releases" that they believe are
5 true, confirmed releases they should report those so they
6 can go through the process and get more information.

7 CHAIRPERSON CLEMENT: I think to add to that, one
8 of the concerns that was raised at the Technical
9 Subcommittee is that in closing some of these sites the
10 Department may go back and identify releases that were
11 reported but never confirmed by DEQ with a LUST number and
12 end up with Catch-22 regarding SAF. So this was just a
13 precautionary note if you have any sites like this.

14 Yeah, we don't confirm it -- you know what, if you
15 submit it and confirmed it and then we later on a year
16 later go, "That's a confirmed release," I think that would
17 still be eligible, if it was confirmed and they never did
18 submit any new information and we messed up. We just
19 assign a LUST number to a confirmed release. Our assigning
20 a LUST number does not have to happen by July 1st.

21 CHAIRPERSON CLEMENT: Okay. So that potentially
22 gives greater flexibility. That's not bad.

23 MR. GILL: I don't know, I guess if we -- the
24 confirmed releases are being -- I mean, they are being
25 submitted for the owner/operator, but they're done by

1 consultants and even as the new rule goes in and registered
2 geologists say these are confirmed releases, I've seen too
3 many of them -- I just don't understand why they're not
4 being assigned -- or why they're being asked for more
5 information.

6 If we put on our environmentalists hats, to me
7 there's lots of releases out there that are never being
8 investigated. Six releases on a piping system and one LUST
9 number, you can't investigate all those releases; and the
10 owner/operators are not inclined to investigate them on
11 their own dollar, you know, and they're told, "You don't
12 have a LUST number," but as the consultants we say, "Well,
13 we saw contamination." DEQ doesn't assign you a LUST
14 number. You know, they're not inclined to investigate it.

15 MR. MC NEELY: If you have, you know, a piping --
16 you know, you have a release from a piping trench, your
17 product flows along the whole trench. You can have like an
18 infinitive amount of releases.

19 I suppose if you did the lateral extent of
20 contamination and you cleaned up what you needed to do for
21 the whole site, if it's in the trench, I mean, how many
22 releases do you need?

23 MR. GILL: You may be actually remediating an area
24 -- in other words, in the example where a LUST number was
25 assigned was a very small release, but during our drilling

1 we found there was actually a much larger release further
2 along in the trench and we were not remediating that.

3 Your system -- if you have a 15-foot release here,
4 you could excavate that but then in drilling at 45 feet you
5 hit it from somewhere else, you know it's coming from
6 somewhere else, it's not that release and -- you know,
7 because it was on one of your lateral borings. There's
8 nothing in place -- and, like I said, the owner/operators
9 are not inclined to go out and spend the money on something
10 they they're not -- you know, they're not assured that
11 they're going to get reimbursement on because they're not
12 assigned a LUST number in the first place.

13 MR. MC NEELY: I still have a hard conceptual how
14 you want to put another lateral out. It seems like you'd
15 catch it in your investigation.

16 MR. GILL: I guess we've had real problems in the
17 past getting new assigned LUST numbers based on additional
18 information at a site.

19 CHAIRPERSON CLEMENT: So if you're in the
20 situation where you might have a circumstance like that,
21 you're gonna have to go back and check the records and make
22 sure they've been reported.

23 Ms. Foster.

24 MS. FOSTER: Well, I don't expect DEQ to give me a
25 LUST number for every pinhole leak I find in a 20-foot

1 pipe.

2 MR. MC NEELY: That's what we try to balance.

3 CHAIRPERSON CLEMENT: Okay.

4 MR. GILL: Well, you know, that's the gist of most
5 of the issues, if there's any more discussion. I just hope
6 on the last one -- and the Department has mentioned they're
7 gonna be as flexible as possible and move as rapidly as
8 possible as we approach the deadline.

9 CHAIRPERSON CLEMENT: Do we want to make any kind
10 of recommendation to the Department on notice of that's
11 part of this or do you want to --

12 MR. GILL: Well, I think the Department was going
13 to -- you just mentioned you're gonna keep -- as the
14 deadline approaches, you're gonna become more and more
15 aggressive getting the word out that the time frame is
16 coming up.

17 I guess you might just send out possibly on the
18 bulletin a discussion similar to Item No. 1 -- or issue
19 No. 1 is that the owner/operator confirms the release but
20 it's verification by the Department that truly -- and
21 assigning the LUST number that truly makes it a confirmed
22 release. "So if you don't hear from us and it's
23 approaching the deadline, you know, this has to be verified
24 before this deadline."

25 CHAIRPERSON CLEMENT: I don't think they said

1 that.

2 MR. GILL: Well, but I don't think it would

3 behoove the owner/operator to sit on his hands --

4 CHAIRPERSON CLEMENT: And wait, yeah.

5 MR. GILL: -- and assume it's going to be approved

6 by the deadline.

7 CHAIRPERSON CLEMENT: I agree with the point about

8 you want to follow up, but I don't agree with the portion

9 that it won't complicate it if it's not verified until that

10 time. We just have to be very factually correct.

11 MR. GILL: They need to understand that.

12 MS. MARTINCIC: They take their chances.

13 CHAIRPERSON CLEMENT: Could we make a suggestion,

14 then, that the materials that were provided by the DEQ,

15 these and this, be put on the bulletin and this as an

16 attachment with just a, "Remember, everybody, you got to

17 have a confirmed release reported before"?

18 Mr. Drosendahl.

19 MR. DROSENDAHL: We are also working on a

20 newsletter that we hope to get out real soon that in there

21 will reiterate this, too. So the newsletter is another way

22 for us to get the word out.

23 MR. GILL: I would just suggest you clarify the

24 issue No. 1, make sure they understand you confirm it, but

25 the verification and the LUST number is what gets you in

1 the program.

2 MR. MC NEELY: The postcard -- you guys all saw
3 the postcard we e-mailed out? That talks about free
4 product -- or we make that clear.

5 I don't think we've actually sent that out yet.
6 Have we sent the postcard out?

7 MR. KERN: It's in the mail.

8 MR. MC NEELY: It's on the website. I know we
9 e-mailed it to everybody. I know Andrea, I e-mailed it to
10 her and I think -- and then when we go on our inspections
11 we hand that out, too. So we're trying to get the word
12 out.

13 The postcard is pretty alarming looking, red, and
14 get people's attention.

15 MR. JOHNSON: It has my name as a contact person.
16 I've already received several calls on it, people asking
17 for clarification.

18 CHAIRPERSON CLEMENT: Okay. Do you suggest, then,
19 that we do more with the bulletin by putting these
20 materials again available on the bulletin?

21 Would that be helpful?

22 MR. DROSENDAHL: That would be fine.

23 CHAIRPERSON CLEMENT: I think since you've put
24 them together it would be very useful.

25 Mr. Gill.

1 MR. GILL: Well, I guess rather than jump back
2 again, the next Technical Subcommittee is April 12th in
3 4001. Is that the room number?

4 MR. DROSENDAHL: Yeah.

5 MR. GILL: Room 4001, nine to noon, and we will
6 probably finish up the outline that I presented a number of
7 meetings ago with the discussion issues for remedial
8 programs right at the very end.

9 So I think we'll finish that up and hopefully for
10 the next meeting we'll get the tables that I want to
11 finalize with DEQ responses and that kind of stuff.

12 CHAIRPERSON CLEMENT: Okay. Anything else for the
13 Technical Subcommittee?

14 Let's just go back to the agenda then. The
15 Potential Effects of Blended Fuels, this was a question
16 that Mr. Findley had regarding specifically an example of
17 ethanol petroleum, and we had asked the DEQ to provide us
18 some comments on that.

19 MR. KERN: I'm Ron Kern, Manager of the
20 Underground Storage Tank section at DEQ and, basically, I
21 went out to -- not being an expert, I went out to
22 encyclopedia Internet and checked out a few things.

23 So what I'd kind of like to do just to bring
24 people up to speed on it is just kind of talk about what is
25 E85 or ethanol-blended fuels, what are the general concerns

1 associated with E85, what are the potential impacts of E85
2 on UST systems as we understand them, and what are
3 considerations potentially associated with an E85 leak from
4 a UST system.

5 If there's questions along here -- I'll try to go
6 through this pretty quickly and briefly, but if there's
7 questions just jump in and I'll see what I can do to
8 clarify.

9 On E85 -- and there's a lot of ethanol-blended
10 fuel out there and they've been around for more than a
11 century, basically, but E10, which is a 10 percent
12 ethanol/90 percent gasoline mixture has been around as an
13 oxygenated fuel for quite a while.

14 E85 is a little bit more specific. It's an 85
15 percent ethanol/15 percent gasoline blend that is used in
16 various parts of the country, including Arizona. It's
17 typically used in light-duty vehicles that have the
18 flexibility to operate with ethanol and gasoline mixtures,
19 and there are certain benefits associated with the
20 ethanol-blended fuels.

21 Particularly, ethanol is an oxygenate. So if you
22 have ethanol-blended fuel, you're essentially potentially
23 having cleaner air associated with the emissions from that
24 fuel. Ethanol also has a higher octane rating than
25 gasoline typically, and you can reduce engine knock and

1 it's a little bit nicer that way.

2 There are some general concerns associated with
3 E85. It has a lower energy content than gasoline so it
4 takes more ethanol to obtain the same mileage as compared
5 to a gasoline-powered vehicle.

6 Ethanol is hydrophilic, meaning essentially that
7 it's water loving. So vehicles don't perform very well if
8 you have water in your tank and it starts going through
9 your carburetor system or your electronic fuel system. So
10 there might be an issue there.

11 Ethanol is hydrophilic in and of itself. It might
12 be a little bit more corrosive potentially than gasoline.
13 So your engines and some other things might be a little bit
14 -- wear a little bit more quickly.

15 E85 only can be used in vehicles that can accept
16 it, and looking up on the web site -- and, again, everybody
17 has their own issues on the web site. They're all a little
18 bit self-serving. There's only about 1.5 million vehicles
19 in the US that are designed to use that right now.

20 CARB, the California Air Resources Board, is very,
21 very interested in E85 so I checked with our air quality
22 folks for a little bit of information about it, too, and
23 CARB has studied the ethanol blends, including E85, and
24 determined that the elastomer hoses, gaskets and seals --
25 so those are the rubber-like polymers -- allow a few more

1 vapor contaminants or VOCs to escape. E85, this apparently
2 is not the issue too much for that.

3 "Shelf life" for the ethanol-blended fuels tends
4 to be an issue because ethanol tends to disassociate from
5 gasoline. So that's why they don't mix it back at the
6 refinery. They mix it here at the distribution points.

7 Vapor lock, some people come up with the issue of
8 vapor lock; but ethanol-blended fuels, that's really an
9 issue of the past. The fuel formulations are such nowadays
10 that, really, that is no longer an issue.

11 Now, specifically to get to Mr. Findley's issue of
12 what are the potential impacts of E85 on UST systems, those
13 go all across the board and I will try to be as unbiased
14 and brief as possible on those.

15 So it boils down to because ethanol tends to be
16 relatively more corrosive and certainly hydrophilic than
17 gasoline, some consider the steel tanks in and of
18 themselves might be more -- some of them more susceptible
19 to corrosion than with petroleum-based fuels.

20 There might be a little bit more pitting, and I
21 think it relates more to the hydrophilic nature of the
22 ethanol. So there might be a little more pitting with the
23 steel parts of the system.

24 There still are the compatibility concerns being
25 raised regarding degradation of certain elastomeric seals,

1 o-rings, gaskets and non-Teflon pipe dopes in there. So
2 acture joints and the like at the fittings, there may be --
3 and I stress "may be" depending upon how that system's
4 designed, whether it's designed to accept ethanol-blended
5 fuels or not -- there might be some degradation issues.

6 There have been recommendations out there that
7 converting existing UST petroleum-based gasoline,
8 diesel-type fuel systems to an ethanol-blended system,
9 basically including E85, they just don't recommend that;
10 and I can't really go into that because if it was designed
11 for a certain use, you can't just go change that system
12 over without some potential impacts. They recommend not
13 doing that.

14 I will try to put into context, E85 leaks.
15 Ethanol-blended fuel leaks will occur. They'll always
16 occur. BTEX plumes, the benzine, the toluene, the
17 ethylbenzenes, the xylenes that are associated with
18 gasoline, those plumes, if you hit one of them, that
19 contamination does hit ground water. If it hits ground
20 water, they tend to migrate a little bit further because of
21 co-solvency and, basically, your microbes down there like
22 the ethanol just a little bit better than gasoline,
23 although eventually they'll get after the gasoline
24 constituents.

25 The majority of a plume of ethanol is really quite

1 biodegradable. As I said, the microbes, the little bugs
2 really like ethanol a lot. They party down.

3 To put it into context also further, there's only
4 four UST facilities in Arizona that have or are scheduled
5 to have E85. There's three in Tucson and one in Sierra
6 Vista, and kind of looking at those we do have those in our
7 database. The majority of the tanks that have those -- and
8 they have a variety of USTs at those -- only one system or
9 one compartment is scheduled to have or has E85 associated
10 with it. So it's not a very prevalent fuel in Arizona to
11 date and there's some states that don't even have it.

12 So that's what I have at this time. If you have
13 other questions, I will try to help you.

14 CHAIRPERSON CLEMENT: Interesting. Thank you very
15 much, Mr. Kern.

16 Mr. Gill.

17 MR. GILL: Back to one of your impacts on the UST
18 systems. Okay, the ethanol is quite degradable, but the
19 bugs will go after the ethanol before they will the BTEX,
20 and so the potential is for the BTEX plumes to migrate
21 further?

22 MR. KERN: That, apparently, was one of the
23 things. There's also a co-solvency issue. It does tend to
24 go further because it migrates with the groundwater.

25 MR. MC NEELY: But, also, there's only 15 percent

1 gasoline. So what they're saying is all the bugs, but it
2 will be less BTEX.

3 CHAIRPERSON CLEMENT: I investigated a release of
4 pure ethanol from tanks from a manufacturing facility, and
5 we could never find it in the groundwater. It just is so
6 quick. So it's more a corrosion issue with the tank and
7 the co-fuel being released, but we couldn't find it.

8 MR. FINDLEY: I guess my question was: Would
9 there be any change -- you say that the industry does not
10 recommend trying to convert an existing UST system to hold
11 the ethanol.

12 MR. KERN: When you say "industry," I mean,
13 basically, that's just kind of a general bias not to just
14 put an ethanol-blended fuel into a system that's been
15 designed solely for diesel or gasoline or petroleum itself.

16 MR. FINDLEY: Would there be any potential for
17 regulation that said that an owner/operator could not do
18 that? Is that something that would be regulated at some
19 point?

20 MR. MC NEELY: Ron, when they build our systems,
21 don't we say they have to be built based on manufacture
22 specifications or something?

23 MR. KERN: Right.

24 MR. MC NEELY: So I think we might have the
25 authority to do that, but I don't think there's been any

1 discussion about specifications.

2 MR. KERN: I think it would probably take kind of
3 a best business practice mandate by the industry to say,
4 "You don't want to do that," with good rationale associated
5 with that; and right now, to the best of my knowledge, that
6 best business practice mandate, if you will, does not
7 exist.

8 MR. GILL: And the reasons for that were based on
9 the degradation of the steel tanks and also the seals
10 primarily or that's part of it in the existing system?

11 MR. KERN: Yes. Yeah, I mean, just that concern
12 that some of the industry -- and I don't want to say they
13 might be biased -- they may be -- kind of suggests that.

14 MR. GILL: My understanding is you mentioned even
15 in the systems designed for the E85, they still do not know
16 how the seals and things are going to work -- how well
17 they're going to work?

18 MR. KERN: No. I think if it's designed for
19 ethanol blends, they've got enough components out there,
20 fittings, seals, pipe dopes that will be amenable to
21 ethanol-blended fuels.

22 MR. GILL: Okay. So that was referring to the
23 existing tanks?

24 MR. MC NEELY: You know, the auto manufacturers,
25 they know -- if they're building these vehicles, they know

1 what the seals have to be like. The information is
2 probably out there. It comes down to regulations.

3 MR. FINDLEY: The information is out there because
4 they've been using pure ethanol in race vehicles and
5 certain specialized areas. So it's not a lack of technical
6 knowledge. It's, you know, a lack of maybe the knowledge
7 at the lower level, "Oh, well, here's a new fuel. I'll
8 just dump that in my existing tank."

9 MS. MARTINCIC: Because if there's not a market
10 for the product, they're not gonna take out a tank that's
11 petroleum based to put in a product that they don't know
12 will make them money. So I don't think there's going to be
13 a mass conversion from petroleum to E85.

14 MR. FINDLEY: There might be some people that
15 would dispute this. The Iowa Corn Growers Association
16 might dispute that, but I think you are in practicality.

17 CHAIRPERSON CLEMENT: Okay. Any other questions
18 or comments on that?

19 Ms. Foster.

20 MS. FOSTER: We had the same issue when oxygenated
21 fuels first came into the valley and a lot of the
22 fiberglass manufacturers who were installing new tanks at
23 that time would only warrant for unleaded or diesel, and
24 they have changed some of the warranty issues to include
25 oxygenated fuels.

1 So I think the industry's aware that we're going
2 in that trend, and if you put in a fiberglass tank it's
3 probably covered under warranty right now.

4 CHAIRPERSON CLEMENT: Okay. The next agenda item
5 is the UST Policy Commission Membership Expiration Dates,
6 and I have been informed by Mr. McNeely there are three
7 members whose assignment dates expired as of May 2005 and
8 there are two members whose expiration date or assignment
9 date is expiring as of May 2006.

10 And I spoke directly with the three members whose
11 expiration date expired in 2005 of May and suggested if you
12 continue to be interested in the Policy Commission to have
13 a conversation with DEQ because the process, as I
14 understand it, for appointment to the UST Policy Commission
15 typically is initiated by DEQ with a list of potential
16 individuals for assignment or selection by the Governor.

17 So the process -- and, Mr. McNeely, correct me if
18 I'm wrong. The process, as I understand it, typically DEQ
19 would take a number, one or more, individuals who would
20 have an interest and expertise in appointment on the
21 Commission, submit that to the Governor's office. They do
22 the review that they do, and then those assignments get
23 made by the Governor's office directly.

24 So there are three people whose appointments have
25 been exceeded and need to have some discussion with

1 Mr. McNeely and then the two --

2 MS. MARTINCIC: There's three for 2006.

3 CHAIRPERSON CLEMENT: There's three for 2006?

4 Who are they?

5 Myron Smith, Jon Findley and Karen Gaylord, also.

6 So that's the process. That's where we are. Based on

7 previous Commission processes when we've had -- apparently

8 when we've had assignment dates that have expired, the

9 Commission member continues to participate as a full and

10 active member of the Commission until there is either a

11 reassignment or a new person assigned to that Commission

12 role. So that's where we are with that now.

13 So I would encourage the Commission members that

14 are active and want to continue to participate please have

15 a discussion with Mr. McNeely about reassignment or if you

16 know others that are interested.

17 Mr. Findley.

18 MR. FINDLEY: Appointment is for how long?

19 MR. MC NEELY: I think we said three-year terms,

20 but in August of 2004 when I started I think we tried to

21 get terms in there. I think we put people into terms that

22 were already ongoing.

23 CHAIRPERSON CLEMENT: Right.

24 MR. MC NEELY: So that's why it seems like -- it

25 surprised me. I was like, "Wow, I thought we just redid

1 this," but they went to terms that were already ongoing.

2 CHAIRPERSON CLEMENT: So they are kind of--

3 MR. MC NEELY: They're staggered.

4 CHAIRPERSON CLEMENT: Yeah, they are staggered so

5 you don't have a brand new Commission from day one.

6 So I would encourage people to be involved and

7 talk to Mr. McNeely, and I greatly appreciate everyone's

8 work on this Commission. People have worked hard and done

9 a lot of great things, I think.

10 Ms. Huddleston.

11 MS. HUDDLESTON: Just a point of clarification on

12 this handout in terms of the phone numbers.

13 CHAIRPERSON CLEMENT: Yes.

14 MS. HUDDLESTON: The 542-8543 phone number under

15 my name is incorrect for whatever. 8528 is the correct

16 number.

17 CHAIRPERSON CLEMENT: 8528, okay.

18 MR. MC NEELY: Is my name spelled right?

19 CHAIRPERSON CLEMENT: For those of you in the

20 audience, we were misspelling Mr. McNeely's name on the

21 agenda, which was caught fortunately.

22 Can we have that corrected and we'll reissue that

23 again.

24 Anybody who has any other changes to the list of

25 contacts please get a hold of either Mr. McNeely or

1 Mr. Johnson with your changes.

2 Okay, we're almost there.

3 Meeting Action Items, I have a list. I'll be
4 preparing a letter based on the direction of the Commission
5 for the Director regarding the withdrawal procedure and
6 recommending that it be placed into a written policy and
7 the regulated community informed.

8 We're going to have a presentation on the Route 66
9 work. Mr. Drosendahl's going to find out the number of
10 reported releases versus the number of confirmed releases
11 as far as -- at our next meeting.

12 We're also going to have somebody hopefully be
13 able to address the '97 spreadsheet issue for Excel for the
14 Tier 2 software.

15 We've recommended that the agency publish in the
16 bulletin and their newsletter regarding the information
17 regarding release reporting and the due dates related to
18 SAF eligibility.

19 Joe and I still have to work on the numbers for
20 the annual report so that we can get a draft report out to
21 the committee -- to the Commission.

22 Did anybody capture anything else? Those are the
23 only things I have.

24 Okay. Next agenda item is a call to the public.
25 I have one speaker slip, Mr. Leon Vannais, regarding

1 initial determinations versus final determinations.

2 MR. VANNAIS: Leon Vannais. I will try to keep
3 this short because I realize this has been a long,
4 exhausting meeting and I don't know -- I think I might
5 present my issues specifically in writing for the policy
6 consideration at the next meeting; but just very quickly,
7 initial determinations and final determinations.

8 Initial determinations can become fabrications of
9 time things, final determinations. Now, we indirectly in
10 the community realize that there's always been a delay due
11 to the backlog and things like that of DEQ's responsiveness
12 to issue a final determination in some instances. So the
13 regulated community waits for the Department to issue its
14 final determination.

15 On occasion recently we've come across instances
16 where the Department has not issued a final determination
17 and, instead, let the interim become the final. Meanwhile,
18 the regulated community is out there is waiting for this
19 final determination that they expect and it never arrives,
20 and by the time they realize this their time frames for
21 filing the formal appeal to the initial determination has
22 already expired.

23 The UST Corrective Action Section deals with their
24 letter in one way. The SAF has historically dealt with
25 their letters another way, but I think the regulated

1 community really needs to know what is the process for
2 issuing final determination. Is it only after formal
3 appeal meetings are held? That's one on the ways it can
4 go, or am I going to have to keep a closer eye on when
5 those initials become final and formally appeal that
6 initial determination even though I fully expect that
7 second letter to be issued from the Department maybe
8 perhaps resolving the issues and I wouldn't have to file
9 the appeal in the first place?

10 So this is a concern. We just need some
11 consistency on our side so that we can give the latitude
12 that you, the Department deserves, because of the backlog
13 but still maintain our own appeal rights; but, as I said,
14 I'll put this in writing because of your consideration and
15 I think it's more of a presentation on the Department's
16 behalf how they in their rights to administer this program
17 are going to approach it. So I appreciate that.

18 CHAIRPERSON CLEMENT: Thank you for your comment.
19 I appreciate it.

20 Any other comments from the public?

21 Ms. Foster.

22 MS. FOSTER: I have a comment and I don't know
23 whether it should be an agenda item for future meetings or
24 just bring it to DEQ's attention that a number of cities
25 within the state are being denied expenses for activities

1 that are required by State statutes; and I don't think
2 these cities will go to a formal appeal on the decision,
3 but there are certain requirements that cities have to do
4 for public improvements that are required by law that we're
5 complying with, but when we go to SAF asking for
6 reimbursement for those expenses we're being denied, and
7 some of the written text of why we're being denied is for
8 little details such as time and materials when it's not
9 always -- we're not always able to get time and materials.

10 So it's just a little bit rough for cities to
11 comply with statute and not have the fund reimbursed.

12 CHAIRPERSON CLEMENT: Thank you.

13 Okay. Any other public comments, general
14 comments?

15 Let's go to Discussion of Agenda Items and
16 Schedule for Next Commission Meeting. Do we have enough on
17 the agenda for the next meeting that we want to have an
18 April meeting, or do we want to skip and go into a May
19 meeting mode?

20 One of the things we're doing we wanted to stay on
21 top of is the SAF Rule. That's one of the reasons we held
22 our monthly meeting. Are there enough agenda meetings
23 under time dependent that we need to have an April
24 meeting?

25 I don't see -- does anybody here want to have an

1 April meeting, have a desire for an April meeting?

2 Okay. My suggestion would be that we not hold an

3 April meeting and move to the May meeting date, which I

4 don't have in front of me.

5 MR. FINDLEY: May 10th -- oh, no, I'm sorry, May

6 24th is on the schedule that we received.

7 CHAIRPERSON CLEMENT: May 24th. Okay, no comments

8 or questions on that?

9 Any additional agenda items beyond what we've

10 talked about or if perchance Ms. Foster or someone wants to

11 set another public issue that was brought up today, wants

12 to have those on the agenda, let me know so we can include

13 that on the May agenda. Okay, great.

14 Any other comments, questions from the Commission

15 before we adjourn?

16 Okay. Thank you, everyone, for in participating

17 in the March 29th, 2006, Underground Storage Tank Policy

18 Commission meeting.

19

20 (Whereupon the proceedings were concluded at

21 11:45 a.m.)

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C E R T I F I C A T E

I HEREBY CERTIFY that the proceedings had upon the foregoing hearing are contained in the shorthand record made by me thereof, and that the foregoing 114 pages constitute a full, true, and correct transcript of said shorthand record; all done to the best of my skill and ability.

DATED at Phoenix, Arizona this 11th day of April, 2006.

Certified Court Reporter